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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS FOR DIVISION II

STATE OF WASHINGTON

**SHAWN C. McROBERTS and SARAH J. McALISTER, husband
and wife; FRIENDS OF THE HISTORIC WEYERHAEUSER
MANSION, a Washington non-profit corporation**

Petitioners/, Appellants

v.

**NORTHWEST BAPTIST SEMINARY d/b/a CORBAN
UNIVERSITY, a Washington nonprofit corporation, and BLUE
RIBBON COOKING, LLC, a Washington limited liability company,
Respondents**

**BRIEF OF APPELLANTS
SHAWN C. MCROBERTS AND SARAH J. MCALISTER,
HUSBAND AND WIFE**

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I. INTRODUCTION

The Petitioners/Appellants, Shawn C. McRoberts and Sarah J. McAlister request that this Court overturn or modify the City of Tacoma Hearing Examiner's Decision dated February 4, 2015¹ and the Hearing Examiner's Order denying Petitioners' Request for Reconsideration dated March 12, 2015² including Hearing Examiner file numbers HEX 2014-027, HEX 2014-029 and HEX 2014-030 (CUP2013-40000211241). These decisions are referred to collectively herein as the "Decisions".

The Decisions affirm and modify in part a decision of the City of Tacoma Director of Planning and Development Services in file No. CUP2013-40000211241 issued on June 13, 2014 and the further decision of the Director of Planning and Development Services issued September 10, 2014 granting Northwest Baptist Seminary d/b/a Corban University ("Respondent") a conditional use permit ("CUP") to use real property it owns in the middle of a quiet North Tacoma residential neighborhood ("Respondent's Property") for a private event center. The CUP authorizes the Respondent to hold private parties on Respondent's Property including, without limitation, weddings and receptions up to 365 days a year.

Prior to the CUP being granted by the City, the Respondent used

¹ Copy attached as Appendix A

² Copy attached as Appendix B

the Property for private events during 2012 – 2014 without a permit. Based on this actual use of Respondent's Property, the parties will occur 3 to 4 days per week during the June through September wedding season with party hours running between 10:00 A.M. and 10:00 P.M. on Friday and Saturday nights and 8:00 A.M. and 8:00 P.M. Sunday through Thursday. Respondent's party events include outdoor weddings and receptions for up to 150 party guests with wine, beer and champagne service, catered food services, and dancing to live and amplified music. Although most of the Respondent's past event and party use of the Property was weddings and receptions, the CUP does not limit the type of private events that may be conducted at the Respondent's Property.

As a result of Respondent's parties, Petitioners and their neighbors have suffered substantial interference with their legal right to the peaceful and quiet enjoyment of their homes in the surrounding neighborhood. The Respondent's parties are large outdoor events which include the use of amplified music and public address systems, dancing, consumption of alcoholic beverages, clapping, shouting, and other constant sound and noises associated with outdoor parties. Although some of the activities at the parties occur inside the Mansion house, a substantial part of the party activities are outside including the wedding ceremony and pre and post ceremony reception and partying. These activities generate continuous

noise throughout the hours of the event with parties occurring as many as 3 to 4 times a week in the summer peak season, which is also the time of year the neighbors want to be outside enjoying what used to be a quiet residential neighborhood.

The Decisions will result in the continued abuse of the Petitioners' legal right to the peaceful enjoyment of their home on a permanent basis unless the Decisions are overturned or substantially modified. The Petitioners and many of their neighbors represented by the group known as Friends of the Historic Weyerhaeuser Mansion ("Friends"), timely appealed the June 13, 2014 and September 10, 2014 decisions of the City of Tacoma Planning Director to the City Hearing Examiner requesting the decision be overturned or modified. Following the Hearing Examiners Decisions on February 4, 2015 and March 12, 2015, the Petitioners and Friends filed timely LUPA petitions in Pierce County Superior Court. The Pierce County Superior Court cases were consolidated and Judge Chushcoff issued a decision on May 12, 2016 reversing the Hearing Examiner's Decisions and denying the CUP³. Northwest Baptist Seminary appealed the Superior Court decision to this Court.

Under the LUPA rules on appeal the Petitioners are treated as appellants for purposes of briefing and therefore present this brief in

³ Copy attached as Appendix C

support of their appeal of the Decisions. The Petitioners request this Court overturn or substantially modify the Decisions pursuant to RCW 36.70C.130. The legal basis for the Petitioners' appeal is stated in subsections (b), (c) and (d) of RCW 36.70C.130 including:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts.

There are many factual and legal arguments that support overturning the Decisions, which are discussed in this brief, not the least of which is the inappropriateness of granting a permit for large private outdoor parties to be held 3 to 4 days per week, in a long established North Tacoma residential neighborhood. In this case the Respondent's prior unpermitted use has proven to be inappropriate and incompatible with the surrounding residential uses, unable to operate within the conditions of the June 13, 2014 CUP, and at times in violation of the City of Tacoma noise and nuisance ordinances⁴.

For these reasons and the other legal and factual authority cited in this brief and the record on appeal, the Decisions should be overturned and

⁴ Pierce County Superior Court granted preliminary injunction on August 15, 2014 against Respondent's party use. Copy attached as Appendix D.

the CUP denied or substantially modified under RCW 36.70C.140.

II. ASSIGNMENT OF ERRORS

A. Assignments of Error Petitioners are expressly appealing the Decision including: Finding of Fact No. 5; Conclusions of Law No's. 3, 5, 11, 12, 13, 15, 24, 25, 29, 34, 36, 37, 38 and 40; Conditions 11, 15 and the Order Denying Reconsideration. The Findings of Fact and Conclusions of Law are stated in the Hearing Examiners Decisions attached hereto as Appendix "A". Authorities for the assignments of error include RCW 36.70C.130(1)(a)-(f); *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 256 P.3d 1150(2011); *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000)

Error No. 1 Finding of Fact No. 5 is not based on the evidence and/or misrepresents facts presented to the Hearing Examiner.

Error No. 2 Conclusions of Law No.s: 3, 5, 11, 12, 13, 15, 24, 25, 29, 34, 36, 37, 38 and 40 should be struck or modified because they include:

- (i) erroneous interpretations of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (ii) are not supported by evidence that is substantial when viewed in light of the whole record before the court; and/or (iii) are clearly erroneous applications of the law to the facts. *RCW 36.70C.130; Ellensburg Cement*

Prods., Inc. v. Kittitas County, 179 Wn.2d 737, 742-743, 317 P.3d 1037, 2014 Wash. LEXIS 73, 2014 WL 465643 (Wash. 2014)

Error No. 3. Conclusion of Law No. 3 misstates the law (TMC 13.06.640 and TMC 13.06.100C.4) because the Respondent's request to to use its Property for "assembly use" is not an approved use under TMC 13.06.100C.4 and is not allowed as a conditional use under TMC 13.06.100C.4. It also erroneous because TMC 13.06.640.F does not "expand[s] permitted uses in historic structures" as concluded by the Examiner. Instead TMC 13.06.640.F provides a process to determine if otherwise prohibited use will be allowed in a particular zone.

Error No. 4. Conclusion of Law No. 5 erroneously concludes that TMC 13.06.640.F is the only section of the Conditional Use code - TMC 13.06.640 - that applies to applications for conditional use permits in historic structures and completely ignores section TMC 13.06.640.A which establishes the required initial determination of appropriateness of any conditional use.

Error No. 5 Conclusion of Law No. 11 is a misrepresentation of the facts and an error of law because it implies that there is discord between the zoning code and the comprehensive plan that must be "harmonized". There is no discord between the City of Tacoma Zoning Code and the Comprehensive Plan in this case because the Zoning Code specifically

limits the authority of the City to grant a conditional use permit to cases where the requested use is “...*appropriate at the proposed location...*” TMC 13.640.A; “...consistent with the goals and *policies of the Comprehensive Plan, any adopted neighborhood or community plan, and applicable ordinances of the City of Tacoma*” TMC 13.640.C and TMC 13.640.F; and “...*not inconsistent* with the health, safety, convenience, or general welfare of persons residing or working in the community.” TMC 13.640.C and TMC 13.640.F.

Error No. 6. Conclusion of Law No. 12 is a misrepresentation of fact and an error of law because the cited sections of the Comprehensive Plan relied on by the Hearing Examiner – *NE-1.5 Historic Preservation* and *NE-1.6 Historic Building Replacement* - apply only to prohibiting the demolition of historic structures and allowing repair and continuation of a legally non-conforming use which do not apply to this case.

Error No. 7. Conclusion of Law No. 13 is in error because it is not supported by facts in the record. The Neighborhood Element of the Comprehensive Plan specifically prohibits commercial “assembly facility” use in this specific neighborhood and the CUP conditions do not cure the inconsistency.

Error No. 8. Conclusion of Law No. 15 is in error because the terms of the CUP do not assure the proven negative impacts from noise, activity,

and parking will be compatible with the surrounding residential uses and ignores the record which describes voluminous complaints from neighbors about the negative impacts on their use and enjoyment of their homes and makes the use inappropriate and incompatible with the surrounding residential neighborhood.

Error No. 9. Conclusion of Law No. 24 is a misrepresentation of fact and an error of law because the expert testimony stated that noise from amplified sound, such as PA systems and amplified music and clapping and cheering at ceremonies in the Rose Garden, would be plainly audible at the property line of Petitioners.

Error No. 10. Conclusion of Law No. 25 is a misrepresentation of the facts and an error of law because the facts presented to the Hearing Examiner establish that use of amplified music does interfere with the Petitioners' and other neighbors' use and enjoyment of their properties

Error No. 11. Conclusion of Law No. 29 is a misrepresentation of the facts and an error of law because the impacts on the Petitioners' Property from a sound wall involve several factors including the scale or height of the wall and its proximity to the property line. Any wall should be required to have landscaping, regardless of its proximity to the Petitioners' property line, because it is necessary to mitigate the impacts of the wall itself on the Petitioners' Property.

Error No. 12. Conclusion of Law No. 34 is a misrepresentation of the facts and an error of law because the weight of the evidence supports the opposite conclusion that the proposed Assembly Facility use is not appropriate or compatible with the neighborhood regardless of compliance with the conditions of CUP decision. *Finding of Fact 11, 12, 13, 14, 15, 16, 17, 20, 29, 30 and 31. Conclusion of Law 14.* The history of the Respondent's use of its Property during 2012 through 2014 as a party house proves this use has, and will continue under the CUP, to degrade the neighbors use and enjoyment of their homes, that the use cannot meet the conditions of the CUP and is a proven nuisance⁵.

Error No. 13. Conclusion of Law No. 38 is a misrepresentation of the facts and an error of law because the weight of the evidence supports a conclusion that use of the Respondent's Property as an Assembly Facility, even if conducted in compliance with the terms of the CUP, will constitute a disturbance under TMC 8.12.060C and D and also under TMC 8.12.060A. *Finding of Fact 11, 12, 13, 14, 15, 16, 17, 20, 29, 30 and 31. Conclusion of Law 14.*

Error No. 14. Conclusion of Law No. 40 is a misrepresentation of the facts and an error of law because the weight of the evidence presented at the hearing below supports the opposite conclusion - that wedding events

⁵ See Appendix D Preliminary Injunction

and receptions conducted in compliance with the CUP will create a nuisance under TMC 8.12.060C and D by interfering with the McRoberts' legal right to the quiet use and enjoyment of their property at the level recognized by the cited case authority.

Error No. 15. Condition 11 creates potential conflict with the full body of the TMC because the noise code under TMC 8.122 is not the only portion of the TMC that applies to the Respondent's use of its Property.

This condition should be modified to state:

"All events must comply with provisions of the Tacoma Municipal Code including, without limitation TMC 8.12.060.A.3 - any sound produced by a sound reproduction device (as that term is defined in Section 8.122.010) that is plainly audible (as that term is defined in Section 8.122.010 TMC) 50 feet from the source of the sound."

Error No. 16. Condition 15 should be modified because it fails to mitigate the sound and noise impacts on Petitioners' Property and creates the risk of additional negative impacts on the Petitioners' Property from the wall itself due to its size and likely location on Petitioners' Property line. The record below clearly proves the use of Respondent's Property as an outdoor event center and party house is not compatible with the surrounding neighborhood. Noise and sound are admitted negative impacts created by the Respondent's party use of its Property and Condition 15 does not mitigate those impacts.

Error No. 17. Conclusion of Law 37 is an error in law and fact because the City of Tacoma has the authority under TMC 13.06.640.F to place conditions on any conditional use which can include prohibitions on service of alcohol.

STATEMENT OF FACTS.

The Respondent owns property located at 4301 North Stevens Street, Tacoma, Washington, which is commonly known as the Weyerhaeuser Mansion (“Respondent’s Property”). There are several buildings on the property including a large residence known as Haddaway Hall, a Greenhouse and a Carriage House all built by John P. and Anna Weyerhaeuser in approximately 1923. There are also two more recently built buildings on this property including a chapel and a educational building which were built in the 1950’s when the Property was owned by the Sisters of St. Dominic.

The Petitioners’ home is located at 4415 North Stevens, Tacoma, Washington (“Petitioners’ Property”) which adjoins the Respondent’s Property and was part of the original Weyerhaeuser Mansion parcels. The southern boundary of Petitioners’ Property adjoins the northern boundary of the Respondent’s Property. The Petitioners purchased and moved into their home in April 2013.

The Petitioners’ Property and the Respondent’s Property are both

located within the Sherman Residential Subarea of the City of Tacoma's North End Neighborhood community planning area. The zoning for this neighborhood is R2 Single-Family Development District with a "VS" View-Sensitive Overlay District. *EX's. RI-4&5.* City of Tacoma Zoning Code - TMC 13.06.100C.4 establishes the legally permitted uses in this R2 zone which include only residential types of uses. The "assembly facility" use requested by Respondent is not a permitted use of Respondent's Property under TMC 13.06.100C.4.

For most of its years, the owners of the Respondent's Property used it in a manner that had only minimal impacts on their surrounding residential neighbors. The home was first used as a personal residence from 1923 to 1942 when it was purchased by the Sisters of St. Dominic ("Sisters") who used the property for a novitiate and school for nuns. The Sisters added a chapel building and an educational building to the property in the 1950's and continued use of the property as a novitiate until they leased the property to the University of Puget Sound from 1969-1975. In 1975 Northwest Baptist purchased the property from the Sisters and began using it as a seminary. *Ex. RI-d-II through 20; Hearing Examiner FOF's 1 and 6.*

In 2010 the Respondent listed the Property for sale in anticipation of closing the seminary. The seminary use continued until May 2014,

when the Respondent closed the seminary. Prior to closing the seminary the Respondent entered into contracts with Blue Ribbon Cooking LLC ("Blue Ribbon") in 2012 including a contract to market the Respondent's Property as a wedding event center and a contract for Blue Ribbon to purchase the Respondent's Property. *Testimony K. Brubaker, RP Vol II, pgs. 208, 210, 216-217; Ex. M-7 Dec. of K. Breubaker.* At that time the Respondent did not have a conditional use permit for the Property, and held events without a permit.

At the time Sarah McAlister and Shawn McRoberts purchased their home in 2013 they were aware that Northwest Baptist had occasional events at the seminary. However, they had no idea of the increased frequency of events as a result of the Blue Ribbon marketing program. Shawn McRoberts testified in front of the Hearing Examiner that in the summer of 2013 he documented 7 parties in one 14 day period in July and 11 parties in another 30 day period. *RP Vol IV, pgs. 46-48.* The events on Respondent's Property included use of amplified music and public address systems, dancing, consumption of alcoholic beverages, clapping, shouting, and other noises associated with a party. The events occurred in the afternoons and evenings with some events going on well past 11 p.m. *FOF 10, 11 and 12.* The high frequency of events is confirmed by Vanessa Volkman, one of the owners of Blue Ribbon. She stated in her

Declaration of August 13, 2014 that between January 2012 and August 2014 her company had put on 132 events at the Respondent's Property and that the Weyerhaeuser Mansion was one of the most sought after wedding venues in Tacoma. This high frequency of party events next door to the Petitioners was unexpected and they complained to the City of Tacoma about the parties at Respondent's Property. *FOF 17; Testimony of McRoberts RP pgs 43 – 46; Ex. Rd-1-430 through 436; Ex. M-8 Dec. V. Volkman.*

The frequency and intensity of the Respondent's use of its Property for private events destroyed the Petitioners' ability to peacefully enjoy their residence including use of their decks and yard. In addition, the event activities caused the Petitioners to suffer emotional distress from worrying about when the next party will occur and then being deprived of the quiet use of their property during the events. They come home from work never knowing if there will be a party going on next door with 150 people and the associated amplified music, public addresses and the loud voices, clapping and yelling that are associated with Respondent's private parties. The Petitioners have lost sleep as a result of the conduct of the events as well as suffered anxiety about the loss of their peaceful enjoyment of their property. *Ex.M-5-Dec. of Sarah McAlister; Testimony of S. McRoberts, RP-Vol. II, pgs 48-54.*

The Petitioners claims of lost enjoyment in the use of their property are not frivolous. In August 2014 the Petitioners sued the Respondent and Blue Ribbon in Pierce County Superior Court and obtained a preliminary injunction against the their continued use of the Property for wedding events in violation of the Tacoma's Nuisance Code – TMC 8.12.060D and the conditions of the original conditional use permit issued by the City of Tacoma on June 13, 2014 and. *Ex.M-9-Superior Court Preliminary Injunction; Appendix D.*

The Petitioners are not alone in their suffering from the Respondent's use of its Property for private parties. The record confirms that many neighbors filed complaints with the City of Tacoma and appeared at a public meeting in the fall of 2013 to oppose the Respondent's application for a conditional use permit. Ultimately a group of neighbors formed a non-profit corporation, FRIENDS OF THE HISTORIC WEYERHAEUSER MANSION ("Friends") to manage their opposition. Friends appealed the original approval of Respondent's CUP and also filed a LUPA action that was consolidated with the Petitioners' LUPA action.

The Hearing Examiner's Findings of Fact 10 through 16 describe two years of neighborhood complaints about the negative impacts from the Respondent's unpermitted use of its Property for private parties. The

uncontroverted Findings of Fact confirm that: the “neighbors made voluminous complaints to City authorities about activities in and around the Mansion, including calls to code enforcement, police, and fire personnel.” *FOF 16*; the neighbors were troubled by the noise that occurs in the area when guests return to their cars at the end of a wedding reception including “...loud talking between guests, rough language from people under the influence of alcohol, noise from car security systems, and talking in clusters around vehicles well after the end of the event”, as well guests “drinking alcohol at their vehicles before, during, and after the events and on isolated occasions, neighbors also reported guests smoking marijuana near their vehicles, vomiting in yards, and urinating on the sidewalk. *FOF 14*; and the neighbors complained that many of the weekend weddings continued late into the evening, which interfered with the sleep habits of some children and other residents in the neighborhood. *FOF 12*.

Blue Ribbon, admitted in the testimony to the Hearing Examiner by Vanessa Volkman, that some parties did get rowdy and violated the terms of the CUP and Tacoma Noise Standards. In cross examination of Ms. Volkman regarding an event at the Property on August 9, 2014, Ms. Volkman admitted that despite overstaffing the event, her personal attendance at the event to help manage the event, and doing everything she

could to keep the party under control, the party got out of control and resulted in violations of the terms of the CUP and the City Noise Standard.

RP- Vol III, Testimony of Volkman, pgs 56 – 58.

The Hearing Examiner's findings cited above and her Conclusion of Law 14 confirm the record "...contains extensive evidence about the conflicts that have occurred between the neighbors' use of their homes and the Respondent's use of the site for wedding events. *Conclusion of Law 14.* The Planning Director's original permit approval dated June 13, 2014 also makes a finding that the use of the Property for private events has a negative impact on the surrounding neighborhood. In his *Conclusion of Law No. 9*, Planning Director Huffman states that: "The record is clear that recent weddings at the site have negatively impacted the neighborhood." He further stated that "[i]t is of particular importance is to mitigate impacts from noise and traffic." *Ex. R1-1 through 16.*

Despite substantial facts establishing that: (i) the Respondent's use of the Property for private events created a public nuisance; (ii) the many persons who live in the surrounding neighborhood suffered loss of enjoyment in their use of their properties; and (iii) the City of Tacoma's acknowledgment of the negative impacts of the use on the neighbors right to the quiet enjoyment of their properties - the City of Tacoma approved a conditional use permit to allow the Respondent to use the Property as a

private event center on June 13, 2015. This approval was substantially confirmed by the Decisions. The approvals are based on the primary conclusion that the conditions imposed by the CUP mitigate the negative impacts on the residents in the neighborhood and ensure the use is compatible with the surrounding neighborhood residential uses, the Comprehensive Plan and the City of Tacoma codes. This conclusion is not supported by the record.

IV. LEGAL ARGUMENTS

A. REQUEST FOR RELIEF

Petitioners request this Court reverse and/or remand for modification pursuant to RCW 36.70C.140 certain Findings of Fact, Conclusions of Law and Conditions of Permit made by the Hearing Examiner including: Findings of Fact No. 5; Conclusions of Law No.'s 3, 5, 11, 12, 13, 15, 24, 25, 29, 34, 36, 37, 38, and 40; and Conditions of Permit No.'s 11 and 15. The Decisions of the Hearing Examiner should be reversed and/or remanded for modification pursuant to RCW 36.70C.130, because they include: (i) erroneous interpretations of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise; (ii) are not supported by evidence that is substantial when viewed in light of the whole record before the court; and/or (iii) are clearly erroneous applications of the law to the facts.

Ellensburg Cement Prods., Inc. v. Kittitas County, 179 Wn.2d 737, 742-743, 317 P.3d 1037, 2014 Wash. LEXIS 73, 2014 WL 465643 (Wash. 2014)

Petitioner is appealing the Decisions because substantial and persuasive evidence was presented to the Hearing Examiner that the Applicant's requested to use of its Property for large outdoor private parties 3 to 4 days per week, is inappropriate and incompatible with the existing surrounding residential uses and the conditions of the CUP do not ensure the use will be compatible with the surrounding neighborhood. The substantial evidence includes the appearances at a public meeting in November 2013 where 80 of the Applicant's neighbors attended and objected to Applicant's proposed use, the testimony of a number of these same neighbors before the Hearing Examiner in December 2014, the documented violations by the Respondent's of the Tacoma noise and nuisance codes, *See Ex's M 9, 13, 23 and 24; Appendix D*.

Common sense also tells any reasonable person you can't turn a large mansion in the middle of a long established quiet residential neighborhood into an outdoor party and event center catering to parties with 150 guests, 3 times a week and not substantially interfere the surrounding neighbors peaceful use and enjoyment of their homes. The testimony of the neighbors' opposition to this use is based on their actual

experience with use of Respondent's Property for large outdoor parties in 2013 and 2014. The record clearly proves the negative impacts from use of the Respondent's Property for private parties.

B. STANDARDS OF REVIEW

The approval of a request for a conditional use permit is a land use decision. *RCW 36.70C.020(2); RCW36.70B.020(4); Woods v. Kittitas County*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007). LUPA provides the exclusive means for judicial review of a land use decision. *Woods* at 610. Under LUPA, the superior court may grant relief from a land use decision if a petitioner meets its burden of establishing one of the six standards for relief specified in RCW 36.70C.130(1)(a)-(f).

The present case requires application of RCW 36.70C.130(1) subparts (b), (c) and (d). The court should note that RCW 36.70C.130(2) makes it clear this court can grant the Petitioners' requests for relief without a finding that any part of the Decisions are arbitrary or capricious. "(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct..."

Standard (b) applies to questions of law which the court reviews de novo. *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 828; 256 P.3d 1150(2011). Standard (c) applies to challenges to the sufficiency of

the evidence and the court should apply the substantial evidence standard. Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true. Phoenix Dev at 828-829 citing Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). And standard (d) requires a finding based on the clearly erroneous standard which states that, although there maybe evidence to support the challenged findings or conclusions, if the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed, the reviewing court may reverse and/or remand for modification. Phoenix Dev at 829 citing: Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2nd 267, 274, 552 P.2d 674 (1976).

C. ARGUMENTS

1. ARGUMENT REGARDING ERRORS NO. 1 AND NO. 2.

Finding of Fact No. 5– assigned errors No. 1 is contrary to the testimony and exhibits presented at the hearing and should be struck or modified to state that: “Haddaway Hall, which includes the Mansion, Carriage House and Greenhouse, and all parcels of land are the only structures and site included in the nomination form and listed on the Tacoma Registry of Historic Places”. The record clearly shows the historic designation privilege under TMC 13.06.640.F should apply only

to use of Haddaway Hall, including the Weyerhaeuser Mansion, Carriage House and the Green House because these are the only structures on the Property that can be considered to "...be structures and sites that are individually-listed on the Tacoma Register of Historic Places". Therefore these three original Weyerhaeuser structures which make up the estate are the only structures on the site where a conditional use permit for "assembly facility" use may be allowed under TMC 13.06.640 F.

The other two buildings on the site, Chapel and Education Building, are non-contributing to the historical status, not historical, not on the Tacoma Registry of Historic Places and must be excluded from "assembly facility" use allowed under the CUP. The land uses available for conditional permitting under TMC 13.06.640.F. are only available in those "...structures and sites that are individually-listed on the Tacoma Register of Historic Places...." TMC 13.06.640 F. It is clear from the Respondent's 1992 nomination form requesting listing on the Tacoma Register of Historic Places, the City Staff's request to the City Council for listing and the City Council Resolution of June 9, 1992 approving the listing, that only the historical Weyerhaeuser estate including the Mansion, Carriage House and Greenhouse can obtain a CUP under TMC 13.06.640 F. *Ex's. M-2, exhibit NWB 31 and R-1d-8.*

The challenged Finding of Fact and Conclusions of Law expand the exclusive application of TMC 13.06.640 F. to non-listed structures. The statute should be read in accordance with its plain meaning which limits the statutes application only to structures listed on the Register of Historic Places. This limitation is appropriate because the use requested by the Respondent is "...not otherwise allowed by the underlying zoning...." TMC 13.06.640 F.

The City code is clear and unambiguous and in such cases must be given its plain meaning which requires limitation of the application of TMC 13.06.640 F only to "...structures and sites that are individually-listed on the Tacoma Register of Historic Places....". Sleasman v. City of Lacey, 159 Wn.2d 639, 151 P.3d 990, 2007 Wash. LEXIS 126 (Wash. 2007). In Sleasman the Supreme Court overturned trial court and court of appeals decisions that failed to interpret a City of Lacey development code section based on its plain meaning. The plain meaning legal theory should be applied to TMC 13.06.640 F because there is no ambiguity in the language of this city code section which specifically limits any conditional use to structures specifically listed by the City Council which includes only the Mansion, Green House and Carriage house. No other structures can be granted a conditional use permit under this special section of Tacoma's conditional use permit code. The Hearing Examiner's

interpretation would allow a site with one small historic structure and many new and modern structures to obtain treatment for the whole site and all structures to receive a permit for the special land uses allowed under TMC 13.06.640 F. This is not consistent with a plain meaning interpretation of this code.

Mr. McKnight, the City's historic preservation officer, testified the Respondent's 1992 nomination form identified only Haddaway Hall as subject to the historic application and that the Chapel and Education Building were specifically noted on the application as "non-contributing" structures. He also admitted that Resolution 31784 adopted by the City Council identifies the structures and property subject to the historic designation and that the Resolution specifically listed *only* Haddaway Hall. He further admitted that the Resolution does not say the full site is historical. *EX. R1d 414; Testimony of McKnight. - RP Vol I, pg 82, 84, 93-9.* McKnight also testified that different parts of a site or building can be historical and on the Tacoma Register of Historic Places, and other parts not historical and not on the Tacoma Register of Historic Places. *McKnight testimony page 87.*

Limiting the historic tag to the Weyerhaeuser structures is consistent with the Resolution of the City Council that puts Haddaway

Hall on the historic registry. The Resolution expressly states that Haddaway Hall is building designated for listing on the Historic Registrar:

“...the Council of the City of Tacoma does by this resolution designated as historic landmarks the buildings known as Haddaway Hall, located at 4301 North Stevens Street, Sprague Building, located at 1501 – 1505 Pacific Avenue, Cabin 97, located at Salmon Beach, Slavonian Hall, located at 2306 North 30th Street, and Fireboat Station No. 18, located at 302 East 11th. *EX.R1d 414-415*.

The historic significance of Haddaway Hall, as stated in its nomination form, is its association with John P. Weyerhaeuser and his association with his timber companies’ industrial complex. Section 8 of the nomination application titled “Significance” has *only* two boxes checked under Areas of significance. Agriculture and Commerce. Two descriptions of the Weyerhaeuser’s timber sales business.

Section 8 of the nomination form makes clear the historic significance of the property applies only to the Weyerhaeuser created Haddaway Hall estate including the Mansion, Carriage house, Green house and the grounds due to their connection with John P Weyerhaeuser who was responsible for the design and construction of all three buildings and who used the property with his wife Anna for their personal residence between 1923 and 1936. The form specifically states that the chapel and auxiliary building (referred to education building in present application)

are “non-contributing” to the historic significance of the property. These two buildings have no relationship to the Weyerhaeusers. These buildings were built in the late 1950s by the Sisters of St. Dominic long after John Weyerhaeuser (1935) and Anna Weyerhaeuser (1933) had died.

Evidence in the record support this analysis. Historic Preservation Officer McKnight sent an email to the City’s Land Use Planner Philip Kao on December 16, 2013 referring to “main residence” together with the “carriage house” and “greenhouse” as the “contributing elements” of the property. The non-historic nature of the Chapel and Education building is confirmed by McKnight’s testimony.

“Q: The -- my point is you then would consider the educational building a historic structure also; is that correct?”

“A: I would be considering it a structure on a historic site”
Testimony of McKnight. - RP Vol I, pg110.

Further McKnight testimony confirms the Education Building and Chapel are not historic buildings. He clearly states the Historical Society’s only concern regarding these non-historic buildings is how physical changes to these buildings would affect the overall visual appearance of the site and are not about physical changes to these two building. If the buildings were historical, physical changes to the buildings outer structure would need approval from the Historical Society.

Um, the, uh, buildings -- the chapel, the educational building, as I said, are referred to as noncontributing elements with the historic property.

However -- so -- so to put it this way, we are less -- we would be less concerned with impacts to the integrity of those buildings, per say, than what the overall effect on the rest of the site is (Inaudible) if that makes sense. *Testimony of McKnight. - RP Vol I, pg 127*

“And so – but now, if there was a substantial modification to that building that affected the overall site, then yes we would review it.” *Testimony of McKnight. - RP Vol I, pg 110*

Buildings which were not part of the nomination for historical status and which are not historical according to the Historical Preservation Officer cannot be construed to be listed on the Tacoma Register of Historic Places. Therefore the privilege of alternate uses under TMC 13.06.640.F. should apply only to the buildings which were part of the Weyerhaeuser estate including Haddaway Hall (Mansion), the Carriage House and Green House. The Chapel and Education building should be excluded from the CUP. *EX.R1d 414 – 421.*

TMC 13.06.640 F includes specific language limiting the scope of its application:“...This provision shall be limited to only those structures and sites that are individually-listed on the Tacoma Register of Historic Places...” The CUP approval should be modified to limit the “assembly facility” use to Haddaway Hall estate consisting of the Mansion, Carriage House and Greenhouse and all parcels of land.

2. ARGUMENTS ERRORS NO. 3, 4, 5, 6, and 7

Conclusions of Law No.’s 3, 5, 11, 12, and 13– assigned error No.’s 3

through 7 – should be struck or modified because they are erroneous interpretations of the law, not supported by substantial evidence in the record and are clearly erroneous application of the law to the facts in this case. These conclusions of law are the foundation of the Hearing Examiner’s conclusion that allowing the Respondent to operate a commercial business on its Property catering large private outdoor party events in the long established north Tacoma residential neighborhood was consistent with the City of Tacoma Comprehensive Plan and City Code as required by TMC 13.06.640 and TMC 13.06.100C.4.

Petitioners dispute these conclusions because granting a CUP to the Respondents permits a new commercial use of their Property for private outdoor party events which is not consistent with the Comprehensive Plan, as required by TMC 13.06.640.F, and cannot be made consistent through imposing conditions. The Neighborhood Element of the City’s Comprehensive plan prohibits this “commercial use” in the zoning and planning areas where the Respondent’s Property is located.

The City of Tacoma has two paths to make land use approval decisions. The first is through the TMC zoning code 13.06.100 C.4. If the use is permitted (P) in this zoning district use table, then the City of Tacoma has determined that the use is appropriate and compatible with the other uses in the particular zoning area and the use is allowed. The second

approval path is if use is allowed as a conditional use (CU) under 13.06.100 C.4, the TMC may allow for the option of submitting an application for a conditional use permit. In this case, “assembly facility” use is not a permitted (P) or conditional use (CU). It is designated as not permitted (N). *Appendix F TMC 13.06.100C use table*

The TMC zoning code prohibits “assembly facility” use in the R2 residential zone under TMC 13.06.100C.4. However, TMC 13.06.060.F grants Respondents the option to apply for a conditional use permit for a historic building if the use can be proven to be consistent with the City’s Comprehensive Plan as well as meeting all the other criteria for approval of a conditional permit under TMC 13.06.640. This puts another layer of scrutiny to allowing the use, because the City of Tacoma has already determined that the use is not generally compatible based on its exclusion from permitted (P) or conditional uses (CU) in the R2 zone.

TMC 13.06.640.F. requires that Respondent prove the use is consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plans, and applicable ordinances of the City of Tacoma. The Hearing Examiner agreed that consistency is necessary in her Conclusion of Law No. 7 that states: “As in the

Weyerhaeuser case⁶ the reference to compliance with the Comprehensive Plan in TMC 13.06.640.F.1. requires substantive consideration of the Comprehensive Plan.” The testimony of Jana Magoon confirms it is mandatory that the use be consistent with the Comprehensive Plan.

Q: -- the -- this section actually incorporates by reference and requires compliance with the Comprehensive Plan; doesn't it?

A: Um, what it says in -- in -- verbatim is “the use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plan and applicable ordinances of the City of Tacoma.”

Q: Okay. So by including that -- I mean, the -- the City didn't have to put that provision in this, um, section of 13.06.640; did they?

A: No.

Q: And -- but by doing so it made compliance with the Comprehensive Plan mandatory; didn't it?

A: It made consistency with the Comprehensive Plan mandatory. Yes.

Testimony of J. Magoon, RP-Vol II, pg.90-91.

Once the use application is going down the CUP path, the City uses a mix of codes and policies from the TMC and Comprehensive Plan to determine if the use is appropriate and compatible in a specific neighborhood. The Hearing Examiner confirmed this process in her Conclusions of Law No 9 which states in relevant part as follows:

“...As indicated above, the Comprehensive Plan provisions acknowledge the need to look at policies in relationship to other policies when evaluating a given project....”

The contextual relationship between the different code section and

⁶ Examiner is referring to case of *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43 873 P.2d 498 (1994) that held where a zoning code requires compliance with Comprehensive Plan the use must be consistent with the comp plan.

the general goals and specific policies of the Comp Plan is application of general policies or codes followed by application of the more specific policies or codes with the more specific policy or code taking precedent. The Examiner, in Conclusions of Law 11 and 12, wrongly applies this relationship by giving alternate conditional uses in historic structures precedent over more specific elements of the Comprehensive Plan and reading TMC 13.06.640.F. to give such alternate uses precedent of the Comp Plan. This is opposite of the codes specific requirement that the alternate use be proven to be consistent with the Comp Plan and compatible with the surrounding neighborhood uses.

It is true that certain elements of the Comprehensive plan, like the General Land Use Element, have broad policies, but other elements of the Comp Plan are very specific, more specific than the zoning code. The Examiner erred in Conclusions of Law No. 3 and 11 by concluding the TMC zoning code is more specific. In fact, the policies of the Neighborhood Element of the Comprehensive Plan are the most specific guidance – setting standards and limitations on land uses on a street by street and neighborhood district to district basis. It is these Comp Plan elements that should have priority in the land use decision process.

City of Tacoma Planning Manager Jana Magoon's testimony confirms the more specific policy of the Neighborhood Element takes

precedent in land use decision making processes:

Q: Now, are you aware of other provisions of the Comp Plan that say when you're dealing with the residential neighborhoods that you apply the more restrictive Inaudible) --

A: Oh, you mean, like so, the neighborhood policies are more restrictive --

Q: Now --

A: -- than the overarching, yes.

Q: Yes. Okay. So the neighborhood policies actually, per the Comp Plan, they do trump the other policies, which would include the historic preservation policies which is - -

A: Within the --

Q: -- general policies that exist.

A: -- within the context -- my understanding, my opinion, within the context -- that statements within the context of the hierarchy of the residential policies.

Q: The residential policies the City fathers and mothers deemed protecting residential neighborhoods have the highest priority?

A: That's right. And -- yes.

Testimony of J. Magoon, RP-Vol II, pg. 92.

The Neighborhood Element of the Comprehensive Plan clearly declares its more specific guidance in land use decisions:

"The neighborhood vision and area policies supplement other policies of the Comprehensive Plan and **provide more specific guidance for land use decisions.**" *Neighborhood Element page 5 [Emphasis added].*

Because the Neighborhood Element provides the most granular detail addressing specific land use decisions, the City of Tacoma added the following text in this Element of its Comprehensive Plan to define a policy hierarchy in case of a conflicting policy situation.

"The purpose of this element of the Comprehensive Plan is to provide neighborhoods with an additional tool to guide development. **If a conflict arises between policies found in the Neighborhood Element and a citywide policy, the neighborhood policies shall prevail.**"

Neighborhood Element page 5 [Emphasis added]

Based on the hierarchal information above, Tacoma's codes and Comp Plan policies should have been applied in the following order.

1. Comp Plan - General Land Use Element gives broad policies.
2. The TMC 13.06.100 C.4 sets out permitted and conditional uses.
Every R1 or R2 or R3 etc. neighborhood is treated the same in the zoning code. TMC 13.06.640 sets the standards for approval of a conditional use including consistency with the Comp Plan.
3. The Neighborhood Element of the Comp plan gives the greatest specificity and protection to residential neighborhoods. It covers what can and cannot be allowed in specific districts, subareas of those districts, neighborhoods in the subareas, and when needed, specific streets within the neighborhoods.

When the policies and codes are applied according to their stated hierarchy to the many neighborhoods of the City of Tacoma, there are no conflicts because the City has dictated which policies have priority. The Neighborhood Elements applicable to Respondent's use, prohibit commercial use in this neighborhood. However, in the majority of other residential neighborhoods in the City of Tacoma this commercial use would be allowed.

Attached as *Appendix E* is a table that shows the various

neighborhoods identified in the Comp Plan and whether the Respondent's requested use is permitted under the applicable Zoning and Comp Plan. The chart shows how the TMC and Comp Plan work together, going from general to specific policy or code for "assembly facility" use, showing all district residential neighborhoods in the City of Tacoma. The first policy or code to apply is the General Land Use policies which allow commercial use in residential neighborhoods (not shown in table). The next policy or code to apply is general zoning code TMC 13.06.100 C.4 which prohibits the Respondent's "assembly facility" use in all Tacoma residential neighborhood (Column 2). The next policy or code to apply is TMC 13.060.640 F which provides specific uses for historic structures and allows "assembly facility" use in residential neighborhoods, **if and only if**, the assembly use can be proved to be consistent with the Comprehensive Plan (Column 3). The final policy to apply, is the Neighborhood element of the Comp Plan, which disallows the commercial assembly facility use in specific neighborhoods, allowing it in other neighborhoods, as well as allowing and not allowing commercial use in specific sections and streets of neighborhoods (Column 4). The final result of whether the commercial use is ultimately allowed or prohibited in each neighborhood is shown (Column 5).

It must be noted the majority of residential neighborhoods in the

City of Tacoma allow “assembly facility” use after applying all of the applicable policies and codes as required by TMC 13.06.640.F. However, in certain neighborhoods including the North End Neighborhood where the Respondent’s Property is located, the commercial use is not allowed. The neighborhoods in the North End may be considered the crown jewels of the North End District residential district and are highly protected. That is why the North End Neighborhood Element prohibits commercial use. As the chart shows, no other district has this prohibition in all of its neighborhoods like the North End district does which includes the following specific protection of the existing residential uses:

Neighborhood Element - North End

Goal NE-1 Residential Policy Intent

Encroachment by commercial or other incompatible nonresidential uses shall be prohibited.

Goal NE-2 Commercial Policy Intent

Commercial activity is limited since the North End is primarily a residential district.

3. ARGUMENTS REGARDING ERRORS NO. 8, 9, 10, 11, 12, 13, 14, 15 and 16.

Conclusions of Law 15, 24, 25, 29, 34, 38, and 40 and Conditions 11 and 15 should be struck or modified because they are erroneous interpretations of the law, not supported by substantial evidence in the record and are clearly erroneous applications of the law to the facts in this

case. These series of conclusions address the admitted negative impacts on the long established residential uses surrounding the Respondent's Property. As stated earlier in this brief⁷ there is substantial evidence of noise and other negative impacts that in one case lead to the issuance of an injunction by Pierce County Superior Court⁸. One of the primary negative impacts is the continuous sound emanating from the parties. This continuous noise creates noise nuisances under TMC 8.12.060.C and D for the surrounding neighbors and the conditions of the CUP fail to effectively mitigate the proven negative impacts from the noise. It must be noted that without the new use at the Weyerhaeuser site the neighborhood maintains a quiet environment, as neighbor testimony and videos in the record show.

Tacoma's noise nuisance code, TMC 8.12.060.D defines a nuisance to include the creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort, and repose of owners or possessors of real property, such as sounds from audio equipment, musical instruments, band sessions, or social gatherings. In this case Respondent's use creates a proven noise nuisance. This noise

⁷ For example see: *RP Vol IV*, pgs. 46-48; *FOF 10*, 11,12; 16 and 17; *Testimony of McRoberts RP* pgs 43 – 46; *Ex. Rd-1-430 through 436*; *Ex. M-8 Dec. V. Volkman*; *Ex.M-5-Dec. of Sarah McAlister*; *Testimony of S. McRoberts, RP-Vol. II*, pgs 48-54; *RP- Vol III, Testimony of Volkman*, pgs 56 – 58; *Ex.M-9-Superior Court Preliminary Injunction*; *Appendix D*; *Conclusion of Law 9, 14*; and *Ex. R1-1through 16*

⁸ See *Appendix D*

nuisance is created by introducing a new continuous environmental noise into a quiet neighborhood. The fact that one can audibly hear the new noise is the nuisance, not the level of the sound. This is why noise nuisance codes in TMC 8.12.060 are clearly stated to be independent of any decibel/sound level codes of TMC 8.122.

The testimony of sound expert Dr. Bruck testimony *RP Vol III* page 227 addresses this issue: “And the annoyance factor of an environmental noise source is the fact that I can hear it.” Another major factor contributing to this noise nuisance comes from the 3 – 4 events happening at the site per week. The Respondent’s own sound expert, Julie Wiebusch confirms in her testimony that having multiple events a week contributes to the negative impacts of noise.

Burnham: “...let’s ask another issue on noise impact. It’s -- isn’t it one thing to have a, um -- a barbeque once every month or a party once every month than to have a -- in terms of noise impacts than to have those sounds going on, uh, Friday, Saturday, Sunday, possibly even five or six days a week during the time people are at home in the evenings?” “[D]oes that have any -- as a professional do -- do you take anything like that into account?”

Wiebusch: “I -- I don’t know that you’d be less irritated by a drunken barbeque that somebody down the block was having at midnight. Um, but, you know, the -- the frequency of a sound can have an effect. Yes.

Burnham: And the frequency we’re talking about is not the high or low frequency, but the, uh –

Wiebusch: Number of events.

Burnham: -- the number of events during a period of time; correct?

Wiebusch: Correct.

Burnham: And so that can impact, uh, how sound, uh, affects people; correct?

Wiebusch: Correct.

Julie Wiebush cross examination RP Vol III page 204.

The City of Tacoma has two sets of noise codes, TMC 8.122 and TMC 8.12.060. TMC 8.122 uses decibel levels and distance to monitor sound levels or volume which is the only noise codes the Respondents sound study addressed. TMC 8.12.060, which was not addressed in the Respondents sound study, does not use volume, but classifies noise as public nuisances, which “unreasonably interfere with the peace, comfort, and repose of owners or possessors of real property.” In this case the impact from the noise nuisance comes from frequency of the noise with 3 – 4 events happening at the site per week as well as the fact confirmed by the experts at hearing that neighbors can audibly hear new continuous party noise when none was present before the use commenced. As stated in Petitioner’s sound expert’s *BRC Acoustics* report:

“The continuous audibility of sounds associated with a wedding and reception may clearly be perceived as an annoyance and nuisance by a person with normal hearing”.

The Respondent’s own sound study shows that every event activity modeled in the study is audible at the South and North property lines of Respondent’s Property and this noise disturbs the neighbors’ peaceful enjoyment of their homes. The Respondent’s sound study fails to model

the most disturbing and longest duration noise activity consisting of event attendees outside on the terrace and other areas of the Property, gathering, celebrating, drinking and carrying on. This noise impact was confirmed by City employee Jana Magoon.

COURT: Um, so in response to the, uh, ongoing dining issue, um, you had indicated that you thought that what -- or I guess the question was whether or not, um, the point of that condition was to reduce the possibility of a nuisance. Um, is that a noise problem? What's the nuisance of that being, uh -- this is -- that this condition is directed to?

MS. Magoon: It is -- it is noise. The -- a lot of the complaints were on nights when *there was a lot of activity outdoors*.

COURT: Okay. So it's not anything related to food specifically, but the noise that would be generated by --

MS. Magoon: Right.

COURT: -- having that activity outside?

MS. Magoon: That's correct.

Jana Magoon testimony Vol II, page 168 emphasis added

The Hearing Examiner acknowledged this impact on the neighborhood in Conclusions of Law 14 and 23 which state:

COL 14: "During a number of weddings, noise of various kinds has traveled beyond the site and into the neighborhood."

COL 23: "noise from continuous conversation and laughter was of particular concern to impacted neighbors. Animated levels of continuous conversation were noted for long periods of time during an event and they add a temporal element to the raw dba levels experienced by neighbors. The outdoor dining prohibition is designed to prevent noise impacts from traveling off the site to neighboring properties for extended periods of time and Northwest Baptist did not demonstrate that dining *and extended*

conversation outdoors can be undertaken without undue noise impacts even if a technical noise violation is avoided.” Emphasis added

The Examiner concluded even the most subdued activity of dining outside on the terrace causes violation of noise nuisance code 8.12.060.D and so required dining to be inside, but she failed to address the longer duration and louder disturbance from attendees partying on the terrace for hours into the night. Although, the Examiner agreed this was an issue in her Conclusion of Law No. 23⁹, she failed to remember Ms. Magoon’s answers to her questions cited above, that it is not just noise during food service, it is noise from the other outside activities. Several other witnesses including the Respondent’s sound expert Julie Wiebusch acknowledged this negative impact - RP 12/11/14 page 192.

Wiebusch: “Uh, it may have. I mean, the activity gets louder as the evening goes on. I mean, you have the wedding ceremony, which is fairly subdued. And then, *you have dinner, which is fairly subdued.* And then, you get into the toasts and the DJ turns on the music and it -- you know, *the levels go up as the evening goes on.*” Emphasis added

Petitioner McRoberts also testified to this incompatible impact:

“Uh, pretty typical of a party. You have -- start off with people talking, you know, laughing, carrying on. And then, as the evening goes and, you know, people start really ramping up with alcohol and so forth, it -- it turns into what I call animated talking and excitement. And then, it goes -- and then, you hear the music and then, you -- you know, you peak with, you know, just people cheering and yelling and so forth. “

McRoberts testimony RP Vol IV page 48

⁹ “neighbors testified that significant levels of activity on the terrace generated continuous noise that could be heard in the area *and intensified as the evening progressed.*” COL 23 *Emphasis added*

It is the continuing gathering, conversation, celebrating, drinking, etc. on the terrace and areas of other outdoor areas of Property which generates the noise nuisance. The Hearing Examiner required that the dining, which is the subdued activity be required to be indoors, yet allows the most disturbing activity to continue outdoors throughout the day and night. The proper condition is that all party activity be inside the Mansion building with windows and doors closed. There is no condition or mitigation which prevents this outside terrace/property noise nuisance from disturbing the neighbors including those to the south.

“Casey: Okay. Now, the, um -- the noise attenuation devices or walls that you’ve talked about, um, being up on the, um -- the deck area or patio area or along the property line of the McRoberts, those would not mitigate noise impacts to the, um -- to the south of the mansion; would they?”

“Bruck: That’s a correct statement.” *Bruck testimony 12/11/14 page 243*

South neighbors Dempster and Billingsly, confirmed the continuous noise reaching their property, lasting many hours throughout the day and night.

The Court: “If the parking and the situation was confined to the, um, grounds of the mansion itself do you think that would alleviate your problem or not necessarily?”

Billingsly: “No, I don’t think it would. We hear enough celebratory noise *from people just talking, uh, inside the grounds* there and laughing and occasional statements that are inappropriate, uh, for anything except someone in a bar someplace and enjoying, uh, a joke, etcetera. Those things are quite audible all the way from where we are.” *Billingsly testimony 12/22/14 page 34*

Burnham: “So really, these events and the noises associated with them go on for five or six hours, three days a week on the weekends; is that right?”

Billingsly: "Yes." *Billingsly testimony 12/22/14 page 39*

Dempster: "...this is the chatter I'm talking about from the event....they're sitting out on the, uh, patio during the reception dinner."
Dempster testimony 12/22/14 page 16

The CUP conditions specify that all events comply with applicable noise code requirements. Condition 11 states: "Activities in compliance with the noise code would be unlikely to violate the terms of TMC 8.12.060." However, it is physically impossible to prevent this noise nuisance. Stating that events must comply with noise code requirements does not mitigate the proven noise disturbances from the events.

As for the north property line, there is no evidence or expert testimony that the wall(s) will stop continuous audible noise from reaching the Petitioners residence. Both sound experts testified that a wall on the property line (near the receiver) and walls near the terrace (near the source) would not be effective

5. The sound levels from outdoor events at the outdoor deck and Rose Garden cannot be mitigated to be inaudible at 4415 North Stevens ("Petitioners' Property") without extraordinary measures, except during periods of high ambient noise such as trains passing or aircraft overflights.
BRC Acoustics report Comment 5 report December 10, 2014

"I don't think there's anything real -- realistically, short of a -- a roof over everything that could help the third floor window. The third floor window at the McRoberts residence is 20 about 23 feet above the grade at the house. So, even a 20 foot wall would be absolutely ineffective."
Bruck testimony RP Vol III page 230

The Wiebusch sound report indicated only a very modest decrease in sound generated by installation of a wall at the north edge of the outdoor deck. Both experts agreed that it is not possible to shield the third-floor rear window of the McRoberts' home from sound coming from the Mansion because the height of the room, at 23 feet, is above the reasonable height of a sound barrier in this setting. *Wiebusch Testimony; Bruck Testimony, Vol III pages __*

Condition 15 should be changed because it fails to ensure mitigation of sound impacts as required by TMC 13.06.060.F. This condition, as revised by the Hearing Examiner, allows the applicant to proceed with continued use of the property for private party events without first designing, permitting and constructing the sound wall as well as granting the use permit without confirmation from the sound experts that the wall will actually prevent the noise impact. In addition, the condition fails to establish any deadline for the applicant to complete this mitigation. In the absence of the sound wall, the applicant's conduct of its private parties will have substantial negative impacts on the Petitioners and therefore the condition does not assure compatibility with the surrounding residential uses.

The condition as currently stated also could lead to additional negative impacts on the Petitioners, if it is constructed to close to their

property line. When creating a condition to make a new use compatible with a neighborhood and prevent the new use from negatively affecting the neighboring property use of their properties, the condition itself cannot be incompatible and negatively affect the neighboring properties

The potential negative impacts from a large wall on the property line were admitted by the applicant's sound expert Ms. Wiebush. However, an expert is not necessary to support this conclusion. Common sense tells us that a 20 foot high wall running 100 feet on a property line in a View Sensitive R2 neighborhood will negatively affect Petitioners use of their property. To eliminate negative impacts on their property, the wall(s) must be setback a minimum 25 feet from the property line.

In addition, a wall of this nature is not consistent with the character of the surrounding area as prescribed by TMC 13.06.640 F which requires the conditions to ensure that the use of the building and site will be compatible with the existing historic attributes of the building and site and surrounding uses. Petitioners are not asking the court to decide where to locate the wall(s) for noise elimination, that should be left to the sound experts as the Hearing Examiner stated. What they do ask is that the court establish where the wall(s) cannot be located, due to the likely negative effect on the Petitioners' use of their property. In this case due to the negative impacts a large wall will have to the receiver of the sound, the

court should prohibit this impact from being created by requiring that any wall be close to the source of the sound – on the Respondent’s Property and setback minimum 25 feet from the south property line of the Petitioners’ Property.

TMC 13.06.100.D. defines why setback requirements are needed.

These residential setback requirements are designed to provide yard areas that help to minimize impacts between neighboring uses, allow space for recreational activities, allow access to light and air, serve as filtration areas for storm water run-off, provide a level of privacy and comfort, provide emergency and utility access around and into buildings, provide public view corridors, create a pleasing, rhythmic streetscape, promote consistency with existing development patterns, and promote the desired character of residential neighborhoods.

Condition 15 should be changed as follows [revised text is in italics]:

The Applicant must construct a wall, or walls, designed to screen the residence at 4415 North Stevens Street from noise/sound emanating from the Mansion property. –The wall(s) shall be professionally designed with input from the Greenbusch Group or comparable noise expert. –The Applicant shall confer with the property owners and any noise expert they have retained, when evaluating the size and location(s) of the wall(s). To eliminate negative impacts on the adjacent neighbor, the wall(s) must be setback 25 feet from the property line. The City will approve the design and size of the project giving consideration to the cost and effectiveness of the proposed ~~structures~~structure(s). “Effectiveness” is defined as the wall(s) must protect all of the 4415 North Stevens property and must eliminate any continuous audible sound from sources defined in noise code 8.12.060 D. If the wall(s) are found to not be “effective”, then the permit will be denied. Landscaping near the wall(s) will be ~~evaluated based~~required to eliminate the visual impact on the ~~final location and its proximity to the~~ adjacent property. Permits for the wall(s) shall be obtained. The wall(s) should be installed ~~within six months of final~~and proven to be effective before final conditional use permit approval.

On page 23 of the Respondent's response brief to the Superior Court proceeding below, the applicant proposes that Condition 15 remain as is because it requires that a permit for the wall construction be obtained and that if the character of the wall as proposed by the applicant requires a variance for its scale or location, Petitioners will have a chance to present their concerns to the City of Tacoma and that Northwest Baptist will be required to establish the criteria necessary for a variance. This process does not assure the Petitioners of the same legal protection that an affirmative prescription as a condition to the use permit will provide, because a provision in the conditional use permit requiring the use to not negatively affect the surrounding neighbors as well as requiring the wall to be compatible with the existing historic attributes of the building and site and surrounding uses will assure the petitioner the purpose of the sound wall will be achieved and provide the required CUP protections.

Effectiveness should be defined as "the wall(s) must protect all of the 4415 North Stevens property and must eliminate any continuous audible sound from sources defined in noise nuisance code TMC 8.12.060D. There should be no doubt that the purpose of the wall is to achieve compliance with all applicable City of Tacoma codes. If the wall(s) are found to not be "effective", as proposed by the petitioner in the revised Condition 15, then the permit should be denied.

With regard to the wall, the City of Tacoma on page 14 line 16 of their Superior Court brief states: “McAlister questions the efficacy of the wall seeming to contend that the wall must swallow up all sound and mask entirely all indicia of any assembly taking place at the Subject Property. The City submits that McAlister’s standard for the wall is not reasonable.”

The Petitioners are not asking what the City has stated. The Petitioners claim there is substantial evidence in the record that for the wall to be “effective”, all continuous audible sound from sources listed in nuisance code 8.12.060.D should be prevented from reaching their property, which noise the Hearing Examiner found in her Conclusion of Law 23 to be a nuisance. It must be remembered that without the new use at the Respondent’s Property, as videos in the record show, the neighborhood maintains a quiet environment. With regards to noise nuisance TMC 8.12.060, no reasonable person would find it acceptable to have social gatherings 3 to 4 times a week, possibly more, generating continuous audible noises (no matter what volume, as the Hearing Examiner has found in Conclusion of Law 23), PA sounds or music coming from the site and interfering with the peace, comfort and quiet enjoyment of their property.

Also, landscaping near the wall(s) should be required in Condition 15 to eliminate the visual impact on the adjacent property. The Condition

15 as approved by the Hearing Examiner appears to make landscaping optional. Again, common sense tells us that a 20 foot high wall running 100 feet, even setback 25 feet from the property line, has a negative visual impact on the Petitioners property and negatively affects the use of their property. A wall of this nature is not consistent with the character of the surrounding area which is required in 13.06.640.F and landscaping will be necessary to “ensure that the use of the building and site will be compatible with the existing historic attributes of the building and site and surrounding uses.”

4. ARGUMENTS REGARDING ERROR NO. 17 AND CONCLUSION OF LAW 37 CITY AUTHORITY TO PROHIBIT SERVICE OF ALCOHOL

Alcohol is not compatible with residential neighborhoods and a CUP condition prohibiting alcohol should be added. The Examiner’s Conclusion of Law 37¹⁰ is an error of law because it concludes the City does not have legal authority to regulate service and consumption of alcohol. Contrary to this conclusion, the City controls whether alcohol is allowed at any location in the City, not the State Liquor Control Board.

Q: Okay. So if Blue Ribbon Cooking, LLC had -- had a State liquor permit, um, could the City, even in spite of that, prohibit alcohol at this location?

A: Um, we could -- we could prohibit it. And if the State -- the State often, um, requests input from us if we, uh -- and we would advise the

¹⁰ See Appendix A page 41, lines 3-9

State that we had prohibited it at this address. The State ultimately will decide whether they'll issue the license or not. *Magoon testimony Vol II, Page 29[Emphasis added]*

Magoon's testimony confirms issuance of a liquor license has no bearing on whether the City prohibits alcohol at any location and obtaining a liquor license does not determine whether alcohol service and consumption is allowed and compatible with the neighborhood.

The "Assemblies Facility" use definition does not authorize alcohol service and consumption. *See Appendix H - TMC 13.06.700.A*. Also, TMC 13.06.640.F. does not include any commercial service and consumption of alcohol uses. Therefore, alcohol service and consumption should be prohibited under the CUP because it is prohibited by City codes¹¹ and it is not appropriate and compatible in residential neighborhoods. Conclusion of Law 13 states in part that: "...the use is conditioned to assure protection of residential uses and compatibility with the neighborhood." Finding of Fact No. 10 concludes: "The weddings normally include beer, wine, and champagne service."

Service and consumption of alcohol at a commercial event site is no different from the service and consumption of alcohol at a brew pub, eating and drinking establishments (e.g. dance hall, tavern, saloon, bar,

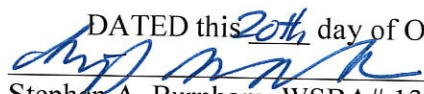
¹¹ See Appendix F - TMC 13.06.100.C zoning table showing eating and drinking establishments and restaurants prohibited in residential zones. Appendix H - TMC 13.06.700.B and E definitions for eating and drinking establishments and restaurants.

pub, cocktail lounge, bowling alley). Tacoma's zoning code prohibits all commercial service and consumption of alcohol in residential zones.¹² Prohibiting alcohol service as a condition of the CUP is consistent with the City wide zoning code prohibition, and a necessary condition to assure Respondent's new use is appropriate and compatible with this neighborhood. A "No Alcohol" Condition does not deprive Respondent from receiving an "assemblies facility" CUP, but it prevents 150 people from driving through the residential neighborhood streets where kids are playing, pets are running, etc, after event attendees have been consuming alcohol for 4-5 hours. Substantial evidence in the record shows that when alcohol was not allowed at the site, the few weddings held caused no complaints, but when alcohol was served the events were not compatible.

VI. CONCLUSION

Petitioners request this court reverse the Decisions and deny the CUP, or alternatively, remand to the Hearing Examiner for modification consistent with Petitioners' Brief and Assignment of Errors and for award of Petitioner's attorney fees and costs pursuant to RCW 4.84.370 or otherwise authorized by law or equity or the rules of this Court.

DATED this 20th day of October, 2016.


Stephen A. Burnham, WSBA# 13270, Attorney for McAlister and McRoberts

¹² TMC 13.06.100C

APPENDIX

INDEX

- A. City of Tacoma Hearing Examiner's Decision dated February 4, 2015
- B. Hearing Examiner's Order denying Petitioners' Request for Reconsideration dated March 12, 2015
- C. Pierce County Superior Court - Judge Chushcoff Decision dated May 2, 2016
- D. Pierce County Superior Court Preliminary Injunction dated August 15, 2014
- E. Summary of Tacoma Comprehensive Plan Prohibition on Commercial Uses in Residential Zones and Neighborhood Subareas
- F. Tacoma Municipal Code (TMC) 13.100. Residential District [Zoning Code]
- G. Tacoma Municipal Code (TMC) 13.640A-F. Residential District [Zoning Code]
- H. Tacoma Municipal Code (TMC) 13.06.700A.B.E Definitions and Illustrations [Zoning Code]

APPENDIX A

City of Tacoma Hearing Examiner's Decision

Dated February 4, 2015



City of Tacoma
Hearing Examiner

February 4, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

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Re: *Northwest Baptist Seminary v. City of Tacoma, Neighborhood and Community Services Department (NCSD), Friends of the Historic Weyerhaeuser Mansion, Intervenor, File No. HEX 2014-009 (60000101500); Northwest Baptist Seminary d/b/a Corban University and Blue Ribbon Cooking, LLC v. City of Tacoma, Planning and Development Services Department (PDSD), File No. HEX 2014-027 (CUP2013-40000211241); Friends of the Historic Weyerhaeuser Mansion v. City of Tacoma, PDSD, File No. HEX2014-029 (CUP2013-40000211241); Shawn McRoberts and Sarah McAlister v. City of Tacoma, PDSD, File No. HEX 2014-030 (CUP2013-40000211241); and Northwest Baptist Seminary v. City of Tacoma, NCSD, Friends of the Historic Weyerhaeuser Mansion, Intervenor, File No. HEX 2014-032 (60000119521)*

Dear Parties,

Please find enclosed a copy of the Hearing Examiner's Order Dismissing Appeals concerning File Nos. HEX 2014-009 and HEX 2014-032. Also enclosed is a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered in File Nos. HEX 2014-027, HEX 2014-029, and HEX 2014-030.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED February 4, 2015, at Tacoma, WA

Louisa Legg

Sincerely,

Louisa Legg
Legal Assistant

Enclosures (2) – Order Dismissing Appeals; Findings of Fact, Conclusions of Law, and Decision

Cc: Peter Huffman, Director, Planning and Development Services Department (PDSD), City of Tacoma /
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1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **NORTHWEST BAPTIST SEMINARY,**

4 **Appellant,**

5 **v.**

6 **CITY OF TACOMA,**
7 **NEIGHBORHOOD AND**
8 **COMMUNITY SERVICES**
9 **DEPARTMENT,**

10 **Respondent,**

11 **FRIENDS OF THE HISTORIC**
12 **WEYERHAEUSER MANSION,**

13 **Intervenor.**

14 **FILE NOS.:**

15 **HEX 2014-009 (60000101500);**

16 **HEX 2014-032 (60000119521);**

17 **ORDER DISMISSING APPEALS**

18 **THIS MATTER** came on for hearing before PHYLLIS K. MACLEOD, Hearing
19 Examiner for the City of Tacoma, on December 9, 10, 11, and 22, 2014. At the outset of the
20 hearing, the City of Tacoma (City) indicated that it was no longer pursuing enforcement of
21 Notice of Violation No. 60000101500 at issue in HEX No. 2014-009. *The City of Tacoma*
Office of the Hearing Examiner Rules of Procedure for Hearings § 2.11(c) provides:

When the decision or action being appealed is withdrawn by the City,
the appeal shall be dismissed as moot and the appellant(s) shall be
entitled to return of any filing fee paid.

Pursuant to §2.11(c) the appeal in HEX No. 2014-009 is properly dismissed and the filing fee
should be returned to the Appellant.

ORDER DISMISSING APPEALS

- 1 -

ORIGINAL

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768

1 At the beginning of the hearing, the Appellant Northwest Baptist Seminary withdrew its
2 appeal of Notice of Violation No. 60000119521, which was at issue in HEX File No. 2014-032.
3 Pursuant to *The City of Tacoma Office of the Hearing Examiner Rules of Procedure for*
4 *Hearings* § 2.11(b), the appellant may ask to withdraw an appeal prior to presentation of
5 evidence:

6 An appellant may request withdrawal of the appeal. Such a request
7 shall be granted if made before the appellant has completed
8 presentation of his or her case. Thereafter, the granting of the request
is discretionary.

9 Accordingly, the appeal by Northwest Baptist Seminary in HEX No. 2014-032 is properly
10 dismissed.

11 Based upon the foregoing, the Hearing Examiner enters the following:

12 **ORDER**

13 The appeals in HEX No. 2014-009 and HEX No. 2014-032 are hereby DISMISSED and
14 the appeal fee in HEX No. 2014-009 shall be refunded to the Appellant.

15 **DATED** this 4th day of February, 2015.

16 
17 **PHYLLIS K. MACLEOD, Hearing Examiner**

18
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ORDER DISMISSING APPEALS

- 2 -

ORIGINAL

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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

**NORTHWEST BAPTIST SEMINARY
D/B/A CORBAN UNIVERSITY
AND BLUE RIBBON COOKING, LLC;
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION;
SHAWN MCROBERTS AND
SARAH MCALISTER,**

Appellants,

v.

**CITY OF TACOMA,
PLANNING AND DEVELOPMENT
SERVICES DEPARTMENT,**

Respondent.

FILE NOS.:

**HEX 2014-027 (CUP2013-40000211241);
HEX 2014-029 (CUP2013-40000211241);
HEX 2014-030 (CUP2013-40000211241);**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

THIS MATTER came on for hearing before PHYLLIS K. MACLEOD, Hearing Examiner for the City of Tacoma, on December 9, 10, 11, and 22, 2014. The City of Tacoma was represented by Deputy City Attorney Jeff Capell. Northwest Baptist Seminary, Corban University and Blue Ribbon Cooking, LLC (Northwest Baptist) were represented by Attorneys William T. Lynn and Amanda Nathan. Friends of the Historic Weyerhaeuser Mansion (Friends) was represented by Attorney Robert Casey. Shawn McRoberts and Sarah McAlister (McRoberts) were represented by Attorney Stephen Burnham. At the conclusion of the hearing on December 22, 2014, the record was held open for the limited purpose of the City providing a supplemental exhibit requested by the Hearing Examiner. The exhibit was filed on January 9, 2015, and the evidentiary record was then closed.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

ORIGINAL

1 During the hearing, witnesses were placed under oath and testified. Exhibits were
2 admitted and reviewed and the parties made legal arguments.

3 Based upon the evidence submitted, the Hearing Examiner makes the following:

4 **FINDINGS OF FACT**

5 1. Northwest Baptist has owned the property at 4301 North Stevens Street since
6 1975. From the inception of their ownership until May of 2014, Northwest Baptist and Corban
7 University used the property primarily as a seminary for students studying for the ministry.
8 The property is commonly referred to as the Weyerhaeuser Mansion (Mansion), however, the
9 site contains several buildings in addition to the large residence known as Haddaway Hall that
10 was built by John P. and Anna Weyerhaeuser in approximately 1923. Haddaway Hall is a four-
11 story Jacobethan Revival style residence consisting of 32 rooms, 11 bedrooms, and 9
12 bathrooms, with exquisite finishing details throughout. The home has accessory structures
13 including a Greenhouse and Carriage House. The home was occupied as a personal residence
14 until 1942 when it was purchased by the Sisters of St. Dominic (Sisters) and converted for use
15 as a novitiate and school for nuns. The Sisters added the chapel building and an educational
16 building to the site during their tenure. The Sisters operated the novitiate until they leased the
17 property to the University of Puget Sound from 1969-1975. In 1975 Northwest Baptist
18 purchased the property from the Sisters of St. Dominic and began using it as a seminary. *Ex.*
19 *R1-d-11 through 20.* The seminary use continued until May 2014, when the college relocated.
20 *Brubaker Testimony.*

21 2. The main house, Haddaway Hall, is centrally located toward the northerly side of
22 the property. The site is comprised of several tax parcel numbers, but the individual parcels are

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

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1 not separated physically or by type of use.¹ The structures on site include Haddaway Hall, a
2 chapel building, a greenhouse, a carriage house, and a two story education building. The
3 chapel, carriage house, and education building also include a total of four residential
4 apartments. The apartments have been occupied in the past, but are not currently in use.

5 *Brubaker Testimony; Goertzen Testimony.*

6 3. The property is located in an established residential neighborhood of beautiful
7 single-family homes, many with views of Commencement Bay, porches, decks and other
8 outdoor living spaces. The majority of the homes were constructed in the late 1800s or early
9 1900s, before adoption of the Tacoma Municipal Code (TMC). The subject property is
10 adjoined by a steeply sloping area to the east and by residential development to the north, south,
11 and west. The zoning in the area is "R-2" Single-Family Development District with a "VS"
12 View-Sensitive Overlay District. *Ex. RI-5.* The site is located within the Sherman subarea of
13 the North End Neighborhood. *Ex. RI-4.* Northwest Baptist Seminary is listed as a major
14 landmark in this subarea. *Magoon Testimony.*

15 4. The property fronts on North Stevens Street to the west and North 43rd Street to
16 the south. North Stevens Street is a Minor Arterial paved to a width of 22 feet. North 43rd
17 Street is a Residential Arterial. West of North Stevens Street, North 43rd Street is paved to a
18 width of 32 feet, and east of North Stevens Street, North 43rd Street is paved to a width of 24
19 feet. Other Residential Arterials in the area include: North Alki Street and North Mason Street
20 paved to a width of 16 feet; North 44th Street paved to a width of 32 feet; and North 45th Street
21 paved to a width of 32 feet. *Ex. RI-5.*

22 ¹ The complete set of parcel numbers for the property includes 450000-020-1, 450000-021-1, 970500-001-0,
556500-028-0, 556500-036-0, and 556500-037-0. *Ex. M-64.*

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 5. The Weyerhaeuser Mansion was nominated for inclusion on the Tacoma Register
2 of Historic Places in May 1992. *Ex. NB-31*. The nomination form discusses both Haddaway
3 Hall and the grounds. The geographical data section of the application lists a size of 4.7 acres,
4 which includes the area encompassed by all the tax parcels associated with the property. *Id.*
5 Friends and McRoberts contend that Resolution No. 31784, which approved the historic
6 register listing, mentions only Haddaway Hall and that the historic property designation and
7 applicable land use regulations, based upon historic status, should apply to only the residence
8 and not the additional buildings on the site. *Ex. M-2, Ex. B*. The City's Historic Preservation
9 Officer Reuben McKnight testified that the entire property is considered part of the Tacoma
10 historic register listing. Based upon the evidence presented, the entire 4.7 acre site is properly
11 considered part of the historic register listing for the Mansion. The property is also included on
12 the National Register of Historic Places. *McKnight Testimony*.

13 6. For many years the Mansion property was used in a manner that had only minimal
14 impacts on the surrounding residents. When the Sisters ran a novitiate on the property, parking
15 on the nearby streets was not a significant problem and loud noise and revelry did not occur on
16 the site. Occasional weddings may have taken place at the Mansion during this time, but they
17 were rare events without amplified music, alcohol service, or a party atmosphere. *Billingsley*
18 *Testimony; Kray Testimony*.

19 7. When Northwest Baptist began using the property for educational purposes,
20 students from the school parked in the neighborhood, primarily during the day on weekdays, for
21 classes. Events were occasionally held at the school involving a larger crowd such as
22 graduations, Christmas, youth group events, or church gatherings. The property was sometimes

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 rented to local churches for services on the weekend. Weddings were held on the grounds, but
2 only infrequently. *Brubaker Testimony*. The rules for weddings originally imposed by
3 Northwest Baptist prohibited the service of alcohol and did not permit dancing.
4 *Ex. F-23*. None of the neighbors who testified at the hearing were disturbed by the weddings
5 that occurred prior to 2012 under the original Northwest Baptist rules.

6 8. In 2010, Northwest Baptist merged with Corban University. Corban did not have
7 the same rules about alcohol usage as Northwest Baptist and the limits on weddings at the
8 Mansion were modified in or around 2012 to allow alcohol. Dancing was allowed beginning in
9 2009. *Brubaker Testimony*. Northwest Baptist began to more actively pursue wedding rentals
10 for the site beginning in 2012, when it entered into an agreement with Blue Ribbon Cooking,
11 LLC (Blue Ribbon) for the company to be the exclusive catering company for weddings at the
12 Mansion. Northwest Baptist started to rent the property for weddings because they needed
13 income to help defray the substantial cost of maintaining the property and to address items of
14 deferred maintenance. However, they did not have the staff necessary to handle management of
15 the wedding events. *Id.*

16 9. After entering into an agreement with Blue Ribbon for the company to manage
17 wedding rentals at the Mansion, Northwest Baptist contacted the City of Tacoma regarding
18 whether conducting weddings was an allowable use on the property. Senior Planner Dustin
19 Lawrence responded to Northwest Baptist's inquiry, stating:

20 I have concluded that this facility can proceed with the event rentals
21 because it is still operating as a seminary, the use in which it has
22 legal non-conforming rights. Renting the site out for weddings on a
temporary basis is considered accessory to the primary use and
allowed. Be sure that less than 50 percent of the entire site is used

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 for weddings, as the code notes if more than 50 percent of the site is
2 used for a different use, it is not considered accessory anymore.

3 *Ex. NB-22, Ex. A.* Kevin Brubaker, Vice President for Business with Corban University,
4 testified that they would not have continued with the Blue Ribbon contract to engage in
5 wedding rentals if the City had indicated that it was not a legal use. *Brubaker Testimony.*

6 10. After Northwest Baptist started renting the facility more frequently for weddings
7 catered by Blue Ribbon, the Mansion proved to be a popular wedding venue. During the May
8 through September peak wedding season, the Mansion was often used for weddings on two or
9 three days during a weekend. As is typical in the wedding industry, contracts for weddings at
10 the Mansion were entered into 12 to 18 months in advance of the event. *Volkman Testimony.*
11 During the 2012 wedding season, the property was very busy with weddings. Most of the
12 weddings include amplified music for the ceremony although some have live musicians. Most
13 of the ceremonies are outside in the Rose Garden area. Originally, dancing was set up in the
14 garden area. In later months, after complaints from neighbors, dancing was re-located to the
15 patio and terrace, rather than the garden. The weddings normally include beer, wine, and
16 champagne service. Blue Ribbon does not serve hard alcohol at the Mansion. The weddings
17 involve the type of amplified speeches and toasts common to such occasions. Toward the end
18 of the reception, a send-off is common, which can involve cheering, screaming, horn honking,
19 and car noise. *Volkman Testimony.*

20 11. As the number of weddings increased over the 2012 wedding season, and the
21 nature of the festivities became more intense, the neighbors began to experience a variety of
22 impacts. One impact was the sheer number of major events occurring at the Mansion on the

**FINDINGS OF FACT,
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1 weekends during the summer months. Neighbors were likely to be outdoors in the summer
2 working on their property or relaxing in outdoor living spaces. Many of the residents in the
3 historic homes in the neighborhood opened their windows for cool air during the summer
4 evenings because air conditioning is not common in the houses located in the area. *Billingsley*
5 *Testimony; Mulhall Testimony*. Noise coming from activities during the weddings diminished
6 the neighbors' enjoyment of their homes and yards. *Kray Testimony; McRoberts Testimony;*
7 *Mulhall Testimony; Billingsley Testimony; R. Dempster Testimony*. Neighbors were bothered
8 by the relatively short bursts of loud noise, such as clapping and cheering, and noise from the
9 send-off as well as and by the lesser, but more continuous, noise from conversation, dancing,
10 amplified music with heavy bass, and speeches and toasts, which could last for several hours.
11 *Id.* The large number of events at the Mansion reduced the quieter times available for residents
12 of the neighborhood to entertain guests and enjoy the outdoor spaces on their properties during
13 the prime summer weekend hours. *Id.*

14 12. Many of the weekend weddings continued late into the evening, which interfered
15 with the sleep habits of some children and other residents in the neighborhood. *Mulhall*
16 *Testimony*. After nearby residents complained, Blue Ribbon attempted to re-negotiate contracts
17 for wedding events, but they were only partly successful in obtaining agreements to end
18 weddings earlier. *Volkman Testimony*. By 2014, the end time for events had been moved from
19 11:00 p.m. to 10:00 p.m., but evidence was presented that many weddings ran over that
20 deadline, with significant noise after 10:00 p.m. *Kray Testimony; Kao Testimony*.

21 13. The neighbors also emphasized the problem of wedding guests utilizing on-street
22 parking. While the streets in the area are public streets with no posted parking restrictions,

1 some of the roadways are difficult to navigate when cars are parked on both sides. Evidence
2 was presented showing significant use of the nearby streets for parking in connection with
3 wedding events. *Garofalo Testimony; Ex. F-27*. At this time, the Mansion property contains
4 24 parking spaces. *RI-4*. This is not sufficient parking to accommodate the typical 100 to 150
5 guests attending a wedding. As a result, guests use nearby streets. Residents of the
6 neighborhood are troubled by the lack of parking available for their own guests and by the
7 possibility that emergency vehicles might be unable to access their homes when cars are parked
8 on both sides of certain streets. *Garofalo Testimony*.

9 14. Beyond the issue of parking per se, the neighbors are troubled by the noise that
10 occurs in the area when guests return to their cars at the end of a wedding reception. Residents
11 report loud talking between guests, rough language from people under the influence of alcohol,
12 noise from car security systems, and talking in clusters around vehicles well after the end of the
13 event. *Kray Testimony; Mulhall Testimony*. Others are concerned that guests have been
14 observed drinking alcohol at their vehicles before, during, and after the events.² On isolated
15 occasions, neighbors also report guests smoking marijuana near their vehicles, vomiting in
16 yards, and urinating on the sidewalk. *W. Dempster Testimony; Garofalo Testimony*. Neighbors
17 are concerned with raucous and/or illicit behavior occurring in front of their homes. *Mulhall*
18 *Testimony*.

19 15. The neighboring property owners raised additional concerns about the weddings
20 being held at the property including increased traffic, lack of knowledge about the scheduled
21
22

² This practice was referred to as "tailgating." Ms. Volkman indicated problems with tailgating are more common when alcohol is not served as part of the reception.

1 events, and lack of effective security patrols during events. *Ward Testimony; Garofalo*
2 *Testimony; W. Dempster Testimony; Billingsley Testimony.*

3 16. During the 2012-2014 wedding seasons, neighbors made voluminous complaints
4 to City authorities about activities in and around the Mansion, including calls to code
5 enforcement, police, and fire personnel. Neighbors frequently utilized the Tacoma CARES
6 system to register their complaints, but they were dissatisfied with that avenue because it did
7 not result in the immediate response needed to address noise or behavior concerns at the time
8 they were occurring. *R. Dempster Testimony.* Some neighbors began to confront wedding
9 guests angrily and/or engage in activities that disrupted scheduled weddings. *Volkman*
10 *Testimony.* Police reports were filed on more than one occasion. *Ex. NB-44.* On certain dates
11 City enforcement personnel were at the site during a wedding and no violations were noted.
12 *Ex. R13-839; R13-895; Ex. R18.* Weddings have been held that did not create problems in the
13 neighborhood, but many events have generated complaints. At times, complaints have been
14 filed when no wedding was in progress or included activities that were not occurring at the
15 Mansion property. *Volkman Testimony.*

16 17. Appellants Shawn McRoberts and Sarah McAlister live in a home that is adjacent
17 to the northwest corner of the Weyerhaeuser Mansion property. The property was formerly part
18 of the Weyerhaeuser ownership and the structure was used for many years as a dormitory for
19 nuns and/or students. In 1985 the home was separated from the remainder of the estate through
20 a boundary line adjustment. *Ex. R1-4.* McRoberts purchased the home for a personal residence
21 in April 2013. He was aware that the property would be adjacent to parts of the Mansion used
22 for events, but he was unaware of the frequency of use and the noise levels that would reach his

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1 property. The McRoberts home includes a ground level yard and outdoor living space, a small
2 second floor deck and a third floor window, all facing the Mansion and its Rose Garden.
3 McRoberts has a large fence along his property line with the Mansion, but it has not been a
4 meaningful sound barrier. Mr. McRoberts reports that his ability to enjoy his home and
5 outdoor space has been severely compromised by noise coming from weddings at the Mansion.
6 He reports that sounds from the Rose Garden and the terrace, whether amplified or not,
7 interfere with the quiet enjoyment of his home, deck and yard. *McRoberts Testimony*.

8 18. As the level of activity and controversy escalated in the neighborhood, the City
9 attempted to place additional restrictions on weddings occurring at the Mansion. In
10 communication dated July 23, 2013, Jana Magoon reviewed the discussion at a July 2013,
11 meeting held between the City and representatives of Blue Ribbon and Northwest Baptist.
12 Ms. Magoon indicated that the City would allow the parties to honor existing wedding
13 contracts, but that newly scheduled events would need to be "scaled back." *Ex. NB-33*. She
14 suggested that any wedding booked after July 23, 2013, end by 8:00 p.m., use no outdoor
15 amplification, and be limited to 100-150 people. These conditions would govern during the
16 time necessary for Northwest Baptist to seek a conditional use permit (CUP). *Id.*

17 19. During the same timeframe, summer of 2013, the City determined that the level of
18 wedding activity at the Weyerhaeuser site exceeded the characteristics of the historic accessory
19 use the seminary and novitiate made of the property for weddings. The City informed
20 Northwest Baptist that an application for a CUP to allow assembly uses on the site was
21 necessary to continue the expanded wedding venue business. Northwest Baptist filed an
22

1 application for a CUP in October 2013. *Ex. NB-10*. The application proposed the following
2 uses:

- 3 ▪ Continued use of the Education Building for a school with
4 potential adjunct residential use.
- 5 ▪ Repairs to the Greenhouse building.
- 6 ▪ Continued use of the Carriage House for storage and
7 apartments.
- 8 ▪ Continued use of the Chapel for weddings as an indoor venue.
9 Continued use of the residential apartment and continued use of
10 the basement for storage.
- 11 ▪ Continued use of the Mansion and Grounds as a
12 wedding/event/meeting space. Residential and office space use
13 of the building would also continue.
- 14 ▪ Weddings would occur primarily on Thursday, Friday,
15 Saturday, and Sunday. Weddings on other days would be more
16 limited.
- 17 ▪ Hours would be until midnight on Friday and Saturday and
18 until 11:00 p.m. on other nights. No Rose Garden or other
19 outdoor events would be held after 9:00 p.m. Last call for
20 alcohol would be 10:45 p.m.

21 20. While the CUP application was pending, the Applicant continued to host
22 weddings on the site pursuant to their understanding that existing wedding contracts could be
honored. *Volkman Testimony*. Some of the weddings caused problems and neighborhood
complaints about noise, parking, and disruptive behavior continued. In response to this
situation Peter Huffman, Director of Planning and Development Services, issued a letter dated
December 24, 2013,³ requiring Northwest Baptist to further limit activities at weddings held

³ The face of the letter reflects a date of December 24, 2014, which is an obvious typographical error.
Testimony established the letter was mailed in December 2013. *Magoon Testimony*.

1 after March 24, 2014. The letter required no alcohol or dancing and required music to comply
2 with the City's codes related to noise. Further, the duration of the events was changed to
3 require that all activity, including clean-up, be completed by 10:00 p.m. on Friday and Saturday
4 and 8:00 p.m. on Sunday through Thursday. The letter was in the form of a Request for
5 Voluntary Compliance. *Ex. RI-a*. Northwest Baptist responded with a proposed Plan of
6 Action to address the issues raised by Director Huffman. *Ex. NB-16*. The Plan was not
7 accepted by the City. *Ex. NB-18*. The City then instituted enforcement action and issued
8 Notice of Violation 60000101500, which required events undertaken without approval of a
9 CUP to conform to the historic Northwest Baptist restrictions prohibiting dancing and alcohol.
10 The modified hours from the December letter were also incorporated into the Notice of
11 Violation. *Ex. NB-19*.

12 21. In the meantime, the City was processing the Northwest Baptist CUP application.
13 The City held a public meeting regarding the requested CUP on November 7, 2013. *Ex. R-9*.
14 The meeting was attended by over 80 neighbors who expressed strong opposition to the
15 proposed use. *Kao Testimony*. As the project was being evaluated, further information was
16 requested from the Applicant, particularly regarding traffic and parking. *Ex. RI*. After the
17 record was complete, Director Huffman (Director) issued a CUP allowing assembly use of the
18 site dated June 13, 2014. The CUP contains an extensive list of conditions designed to assure
19 that operating the Mansion for assembly uses will be compatible with the surrounding
20 neighborhood. *Ex. RI-1 through 19*. The CUP restricts the number of guests allowed at an
21 event based upon available on-site parking. Dining and beverage service is limited to indoor
22 areas. No amplified music is allowed during outdoor events and all disc jockey (DJ) music and

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1 dancing is restricted to indoor areas. The use is required to comply with noise code
2 requirements. Fire lane access must be maintained and the gate must remain unlocked during
3 events. Professional security must be provided during all events. The Applicant is required to
4 provide a Code analysis demonstrating compliance with requirements for assembly uses. The
5 CUP requires the Applicant to construct a wall to buffer noise travelling from the site to the
6 adjacent property to the northwest (McRoberts property). The CUP is limited to a term of five
7 years, after which the Applicant must apply for a new CUP. The permit requires all
8 modifications to the property to be approved by the Landmarks Preservation Commission. *Ex.*
9 *R1-1 through 19.*

10 22. Friends and Sarah McAlister each requested reconsideration of the Director's
11 decision. Orders on the Reconsideration Motions were issued on September 10, 2014. The
12 Director denied reconsideration of the decision, but modified two conditions. The time for
13 final alcohol service was changed from 30 minutes prior to the end of the event to one hour
14 prior to the end of the event and the condition regarding the buffer wall was further clarified.
15 *Ex. R5; Ex. R4-42 through 47.*

16 23. Northwest Baptist, Friends, and McRoberts all filed appeals of the Director's CUP
17 decision and reconsideration rulings with the Hearing Examiner. The Applicant challenged a
18 number of the conditions placed upon the CUP. Friends and McRoberts challenged the
19 issuance of any CUP approval, as well as the sufficiency of many of the specific conditions
20 incorporated into the permit. Those appeals form the basis for this case.

21 24. In support of the CUP application, the Applicant was asked to provide a traffic
22 study addressing anticipated impacts to traffic loads in the area and necessary parking for

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1 proposed use of the Weyerhaeuser Mansion as an assembly facility. A study was prepared by
2 consulting engineers Heath & Associates, Inc., Transportation and Civil Engineering. *Ex. NB-*
3 *21*. During the hearing, Jennifer Kammerzell, Senior Engineer for the City, testified regarding
4 the traffic impacts of the project and her review of the proponent's traffic study.

5 25. The traffic study concluded that the increase in traffic attributable to assembly
6 events at the Mansion would not create traffic problems in the neighborhood. The traffic study
7 assumed an event size of 250 guests, which is much larger than the size allowed by the CUP.
8 Utilizing peak commute levels as a conservative approach, the study concluded that the Level
9 of Service (LOS) would be low in the LOS A to LOS B range, which is representative of
10 uncongested operations. *NB-21, p.11; R1-d-102*. No controverting testimony was presented at
11 the hearing regarding traffic impacts.

12 26. The study also examined the number of parking spaces that would be necessary to
13 accommodate events occurring at the Mansion. The analysis concluded that a 150 guest event
14 would require 55 parking spaces. This calculation included parking for event staff and guests.
15 A vehicle occupancy capacity (VOR)⁴ rate of 3 people per car was used in the assessment. This
16 figure was based upon information obtained from other wedding catering businesses and was
17 substantiated by documentation collected by the City regarding parking loads required for
18 similar types of facilities in other cities. *Ex. R15-118*. While a few cities reported a VOR rate
19 less than 3, a large majority had VOR rates at 3 or above. Some citizens criticized using a VOR
20 of 3, however, no credible controverting evidence was presented documenting an error or
21
22

⁴ The vehicle occupancy rate was also referenced in the record in places as the VOC rate.

1 establishing an alternative number.⁵ Based upon the evidence presented, the traffic engineering
2 study and its use of a VOR of 3 is credible. At the present time, the Weyerhaeuser Mansion
3 property contains parking spaces for only 24 vehicles. The Applicant plans to expand on-site
4 parking by 21 spaces to achieve a total of 55 spaces, thereby accommodating up to 150 guests.
5 *Ex. NB-30.* The CUP decision ties the number of guests to the amount of on-site parking
6 available with the goal of confining event parking to the Mansion property. *Ex. RI-1 through*
7 *19.*

8 27. In light of the numerous neighborhood complaints regarding noise at the site,
9 Northwest Baptist and McRoberts each presented expert testimony on the topic. Northwest
10 Baptist submitted a noise study prepared by the Greenbusch Group, Inc. authored by Julie
11 Wiebusch, an acoustical consultant with 40 years of experience in the field. *Ex. NB-29.*
12 Ms. Wiebusch based her report on measurements taken on and around the site on October 18,
13 2014. A wedding was scheduled on October 18, although the ceremony was conducted in the
14 chapel, rather than the Rose Garden due to the weather. Prior to the start time for the event,
15 Ms. Wiebusch took ambient noise measurements on each side of the property. She utilized the
16 L_{max} standard contained in the TMC for her work on this report. Both Ms. Wiebusch and
17 McRoberts' expert, Daniel Bruck, Ph.D., of BRC Acoustics & Audiovisual Design, believe the
18 L_{max} standard of measurement is inferior to the L_{eq} standard used by many regulatory
19 authorities, however they agree that the TMC limits are based on L_{max} measurements.

20
21
22 ⁵ Some exhibits, comprised of emails, make reference to a federal government study on vehicle occupancy rates for social trips. The City discounted that information because it was extremely general and did not address assembly or entertainment facilities specifically. This general reference in an email to a report that was not submitted into the record does not constitute persuasive evidence of a more appropriate VOR for assembly uses.

1 *Wiebusch Testimony; Bruck Testimony.* Ms. Wiebusch found measured sound levels at the
2 property's boundaries between 2:00 p.m. and 3:00 p.m. as follows:

- 3 • North Property Line of Mansion – 42 low and 64 high;
- 4 • West across N. Stevens St. – 63 low and 82 high;
- 5 • South at N. 43rd and Mason – 42 low and 63 high;
- 6 • East at the Rose Garden Gazebo – 50 low and 76 high.

7 *Ex. NB-29.* In reaching her conclusions Ms. Wiebusch used the lower reading to be
8 conservative in approach. *Wiebusch Testimony.*

9 28. During the wedding, Ms. Wiebusch took measurements of many of the activities
10 to obtain source data that was used in a modeling exercise to determine noise levels that would
11 occur at different locations in the surrounding area. Measured noises varied from a low of 55
12 dBA for an unamplified male voice at the back of the chapel to a high of 113 dBA for dancing
13 and crowd clapping inside the Ballroom. *Ex. NB-29 – Table 6.* Utilizing this source data,
14 Ms. Wiebusch used recognized acoustic modeling programs and techniques to simulate the
15 level of noise that would be experienced in the surrounding area from typical events during a
16 wedding. She concluded that maximum sound levels at a Rose Garden outdoor wedding
17 ceremony would have to be limited to a level of L_{max} 72 dBA at the audience center to avoid a
18 noise code violation. This level would allow guests to hear the music or officiant, but at a
19 relatively low level. Sound above 72 dBA would cause an exceedance of the daytime noise
20 code limit at the north property line. *Ex. NB 29 – Table 7A.* She also concluded that amplified
21 music at 72 dBA in the Rose Garden would meet the plainly audible standard at the distance of
22 100 feet from the Mansion property line. *Ex. NB 29 – Table 7B.*

1 29. Ms. Wiebusch also modeled predicted sound levels for activities associated with
2 wedding receptions on the property. The predicted sound levels at neighboring property lines
3 for 100 and 150 people dining on the outdoor deck reflected compliance with the daytime code
4 limit of ambient plus 10 dBA. *Ex. NB 29 – Tables 8 and 9.* She further found that indoor
5 dancing with the door and window open to the deck would not violate the standards for
6 amplified music when measured at 100 feet from the property line. *Ex. NB 29 – Table 10.* The
7 study predicted noise code violations at the north and south property lines if cheering occurred
8 on the deck. *Ex. NB-29 – Table 11.* The study also found that erecting a 7-foot wall
9 surrounding the deck would have a very minor impact on sounds levels at the property line
10 caused by cheering on the deck. *Ex. NB-29 – Table 12.*

11 30. Dr. Bruck reviewed the Greenbusch Group report on behalf of McRoberts. He
12 emphasized that the report showed any activity over 72 dBA in the Rose Garden would violate
13 noise code standards. He posited that clapping and cheering would typically occur at the
14 conclusion of a wedding ceremony and that this type of activity would exceed standards. *Ex.*
15 *M-71; Bruck Testimony.*

16 31. Dr. Bruck further mentioned that noise from events at the Mansion would be
17 audible at the McRoberts property, although he acknowledged that the noise code standard for
18 non-amplified sound is not based on a plainly audible standard. He suggested that such sound
19 might violate nuisance standards. He also indicated that noise impacts from traffic and parking
20 associated with events at the Mansion should have been addressed by the report. *Ex. M-71;*
21 *Bruck Testimony.*

22
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1 32. Dr. Bruck did not believe the conditions in the CUP relating to construction of a
2 sound barrier wall would be sufficient to mitigate noise impacts on the McRoberts property.
3 He suggests construction of two barrier walls – one at the north edge of the Rose Garden or
4 north property line 10 to 12 feet high and one at the north edge of the outdoor deck area 10-12
5 feet high. Although he did not perform a full study or take independent measurements, he
6 estimates a noise reduction of 13 to 15 dBA at the north property line if such measures are
7 implemented. This conclusion does not differentiate between the attenuation provided by each
8 wall. The Wiebusch report indicated only a very modest decrease in sound generated by
9 installation of a wall at the north edge of the outdoor deck. Both experts agreed that it is not
10 possible to shield the third-floor rear window of the McRoberts' home from sound coming from
11 the Mansion because the height of the room, at 23 feet, is above the reasonable height of a
12 sound barrier in this setting. *Wiebusch Testimony; Bruck Testimony.*

13 33. City witnesses from the Planning and Development Services Department testified
14 at hearing that they did not consider the CUP in conflict with the Comprehensive Plan.
15 *Magoon Testimony; Kao Testimony.* They indicated that the Comprehensive Plan is a broad
16 document expressing goals and policies applicable very widely. Due to the range of topics
17 discussed in the Comprehensive Plan it is common to have multiple provisions articulating
18 different policies applicable to the same project or activity. At times the policies may appear to
19 be inconsistent. *Magoon Testimony; Kao Testimony.* Comprehensive Plan policies are
20 implemented through the adoption of TMC provisions regulating land use. The City gives
21 TMC provisions precedence over Comprehensive Plan policies in the event of a conflict.
22 *Magoon Testimony.*

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34. City planning witnesses also discussed the five-year term placed on the assembly use approved in the CUP decision. Philip Kao stated that the City considers the five-year limits in TMC 13.05.020 and TMC 13.05.070 as a restriction on the time available for a permit holder to implement an approved project. The provisions pertain to expiration of the permit approval after five years if the development is not undertaken. *Kao Testimony*. Jana Magoon testified that the five-year term was included in the CUP so the City would have an opportunity to review whether the use could, or would, be operated within the conditions. The City was concerned about the venue's ability to co-exist in the neighborhood. *Magoon Testimony*.

35. Any Conclusion of Law deemed to be properly considered a Finding of Fact is hereby adopted as such.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this case under Tacoma Municipal Code (TMC) 1.23.050.B.2.

2. Northwest Baptist, as the Applicant for a land use permit has the burden of proving by a preponderance of the evidence that the proposal is consistent with the criteria for such application. *TMC 13.05.010.B*. To the extent that Friends and McRoberts are seeking review of a CUP granted by the Director, they have the burden to establish by a preponderance of the evidence that the lower decision should be reversed. *TMC 1.23.070.C*.

3. The Applicant is seeking a CUP to allow assembly use of a historic structure. A CUP for this type of use is not generally available in the applicable “R-2” Residential zone.

1 However, the CUP is being processed under the terms of TMC 13.06.640.F which specifically
2 expands permitted uses in historic structures.

3 F. Uses in Historic Structures. A conditional use permit for the
4 reuse of a historic structure and/or site for one of the below-listed
5 uses (where not otherwise allowed by the underlying zoning) shall
6 be authorized only if it can be found to be consistent with all of the
7 following criteria. This provision shall be limited to only those
8 structures and sites that are individually-listed on the Tacoma
9 Register of Historic Places. In granting such a conditional use
10 permit the Director or Hearing Examiner may attach thereto such
11 conditions regarding the location, character, orientation, layout,
12 access and other features of the proposed development as may be
13 deemed necessary to ensure consistency with the intent of the TMC
14 and Comprehensive Plan and ensure that the use of the building and
15 site will be compatible with the existing, historic attributes of the
16 building and site and surrounding uses.

- 11 1. The use shall be consistent with the goals and policies of the
12 Comprehensive Plan, any adopted neighborhood or community
13 plans, and applicable ordinances of the City of Tacoma.
- 14 2. The use shall be located, planned, and developed in such a
15 manner that it is not inconsistent with the health, safety,
16 convenience, or general welfare of persons residing or working
17 in the community. The following shall be considered in
18 making a decision on a conditional use permit:
 - 19 a. The generation of noise, noxious or offensive emissions,
20 light glare, traffic, or other nuisances which may be
21 injurious or to the detriment of a significant portion of the
22 community.
 - 20 b. Availability of public services which may be necessary or
21 desirable for the support of the use. These may include, but
22 shall not be limited to, availability of utilities,
20 transportation systems (including vehicular, pedestrian, and
21 public transportation systems), education, police and fire
22 facilities, and social and health services.
 - 20 c. The adequacy of landscaping, screening, yard setbacks,
21 open spaces, or other development characteristics necessary

1 to mitigate the impact of the use upon neighboring
2 properties.

3 3. The proposed re-use shall promote the preservation and/or
4 restoration of the designated historic structures(s) on the site.

5 4. The proposed reuse and design of any modifications to the
6 historic structures(s) and site shall be approved by the
7 Landmarks Preservation Commission.

8 ...

9 *TMC 13.06.640.F.*

10 4. The following section of the TMC identifies the types of uses allowed in historic
11 structures under the re-use provisions. The uses include art/craft production, assembly
12 facilities, continuing care retirement community, cultural institutions, extended care facility,
13 group housing, intermediate care facility, lodging house, multi-family dwellings, offices
14 offering professional dental, medical, legal or design services, offices for charitable
15 philanthropic or community service organizations where it can be shown that there is limited
16 contact with the general public, personal services, retirement home, and retail, only as an
17 incidental use to one or more of the other listed uses. *TMC 13.06.640.F.5.*

18 5. An argument was raised that the proposal should be analyzed under both the
19 general CUP criteria and the historic structures provisions of TMC 13.06.640.F. Looking at the
20 entire chapter governing conditional use permits, it is evident that the historic structure re-use
21 requirements for a CUP are contained wholly within subsection F. Subsection F makes no
22 reference to the general criteria for CUP approval and many of the identified criteria duplicate
the more general considerations in TMC 13.06.640.C. In addition, this lack of reference to the
general conditions stands in contrast to the provisions of TMC 13.06.640.H, which address

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1 duplex, triplex and townhouse development in NRX Districts and provide, “*In addition to the*
2 *standard decision criteria for conditional use permits*, as outlined above under subsection C, a
3 conditional use permit for a duplex, triplex, or townhouse in the NRX District shall only be
4 approved upon a finding that such development is consistent with all of the following
5 additional criteria....” *TMC 13.06.640.H (emphasis added)*. The terms of TMC 13.06.640.F,
6 governing historic structure re-use contain no such reference. Accordingly, the application is
7 properly analyzed for compliance with only the terms of TMC 13.06.640.F.

8 6. Friends and McRoberts contend that the CUP issued by the City is improper
9 because it violates the first criterion for approval which states:

10 The use shall be consistent with the goals and policies of the
11 Comprehensive Plan, any adopted neighborhood or community
plans, and applicable ordinances of the City of Tacoma.

12 *TMC 13.06.640.F.1*. The City and Northwest Baptist assert that the project is consistent with
13 the TMC and that the City Code prevails over planning documents in the case of a conflict.
14 They further maintain that the project is consistent with the Comprehensive Plan and the North
15 End Neighborhood Plan. The first legal issue to be resolved is whether the project must comply
16 with the Comprehensive Plan in addition to the TMC. The City and Northwest Baptist cite well
17 established authority for the proposition that a Code takes precedence over a Comprehensive
18 Plan in making land use decisions on site specific projects. *Citizens for Mount Vernon v. City*
19 *of Mount Vernon*, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997); *Timberlake Christian v. King*
20 *County*, 114 Wn. App. 174, 183, 61 P.3d 332 (2002). Friends and McRoberts cite authority
21 indicating that if a Code provision specifically incorporates the Comprehensive Plan into
22 consideration of site specific projects, an application must meet both standards.

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1 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994):

2 Generally, a specific zoning ordinance will prevail, even over an
3 inconsistent comprehensive plan. *Cougar Mt. Assocs. v. King Cy.*,
4 111 Wn.2d 742, 757, 765 P.2d 264 (1988); *Nagatani Bros., Inc. v.*
5 *Skagit Cy. Bd. of Comm'rs*, 108 Wn.2d 477, 480, 739 P.2d 696
(1987). Thus, to the extent the comprehensive plan prohibits the
landfill use, while the zoning code permits it, the use would be a
permitted use under this general rule.

6 However, the zoning code itself expressly requires that “[s]olid
7 waste facilities that require a Solid Waste Permit shall indicate on a
8 site plan that the facility *meets* ... any comprehensive land use
plan”. (Italics ours.) PCC 18.10.560. Thus, for landfills, the
zoning code requires consistency with the comprehensive plan...

9 *Weyerhaeuser v. Pierce Cy.*, 124 Wn.2d at 43. As in the *Weyerhaeuser* case, the reference to
10 compliance with the Comprehensive Plan in TMC 13.06.640.F.1 requires substantive
11 consideration of the Comprehensive Plan.

12 7. The next legal issue is whether the proposal is “consistent with the goals and
13 policies of the Comprehensive Plan.” *TMC 13.06.640.F.1*. The parties have differing views
14 regarding the meaning and application of the Comprehensive Plan. The Plan itself
15 acknowledges the broad nature of its provisions and the need to look at all the provisions that
16 pertain to a particular subject:

17 The policies need to be read in context of the Comprehensive Plan
18 as a whole and in relation to other policies. No single policy is
19 more important than any other policy. Individual policies may
20 appear to be in conflict when applied to a specific action, activity
or location. Policies do not exist in isolation and must be
understood in the context of all other relevant policies and the
goals they support. Not all policies apply to every situation.

21 *City of Tacoma Comprehensive Plan, Intro-3*. In this case, the parties have identified
22 Comprehensive Plan policies that focus on different aspects of the City’s land use planning

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1 efforts. Friends and McRoberts emphasize the guidance in the Generalized Land Use Element
2 addressing Residential Development Goals. They assert the project is inconsistent with the
3 policies recognizing the importance of residential neighborhoods and the effort that should be
4 made to protect them from incompatible uses.

5 **LU-RDG-1 Protect Established Residential Areas**

6 Protect, preserve and maintain established residential neighborhood
7 areas located outside of designated mixed-use centers where a definite
8 density, housing type and character prevail; nuisances and
9 incompatible land uses should not be allowed to penetrate these areas.

10 **LU-RDG-2 Prohibit Incompatible Land Uses**

11 Prohibit incompatible land uses from situating within or adjacent to
12 existing or future residential developments and gradually eliminate
13 existing incompatible uses from existing residential areas.

14 **LU-RDG-5 Regulate Non-conforming Uses**

15 Provide stricter regulation of non-conforming uses with the goal of
16 gradual elimination of the non-conforming uses or achieving
17 conformity to existing regulations.

18 Friends and McRoberts also point to the language of North End Neighborhood Policy Intent
19 Section NE-1 which states in part: "Encroachment by commercial or other incompatible
20 nonresidential uses shall be prohibited."

21 8. The City and Northwest Baptist point to other provisions of the Comprehensive
22 Plan, particularly those relating to sites with unique characteristics.

LU-RDLISFD-5 Public and Quasi-Public Facilities

Within single-family detached housing areas permit public and
quasi-public uses and community facilities, provided they are
designed and scaled to be compatible with the existing character,
properly located and adverse effects are minimized.

LU-RDLISFD-8 Unique Sites

Recognizing that there may be individual sites within identified
single-family detached housing areas with unique characteristics,
development with uses other than single-family detached housing

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1 may be considered, provided that the proposed development is
2 properly located, designed, scaled and developed to be compatible
 with the surrounding area.

3 The Comprehensive Plan also contains an entire chapter addressing historic preservation plans
4 for the City highlighting the role that zoning code provisions can play in preserving historic
5 structures. *City of Tacoma Historic Preservation Plan*, p. 2-25.

6 9. Testimony from the City of Tacoma staff charged with the responsibility to apply
7 the zoning code and the Comprehensive Plan indicated that the Comprehensive Plan has such
8 broad coverage that it is common for a project to involve policies from different sections that
9 may appear somewhat inconsistent. The City did not consider the proposed assembly use by
10 Northwest Baptist as in conflict with the Comprehensive Plan provisions when viewed as a
11 whole. As indicated above, the Comprehensive Plan provisions acknowledge the need to look
12 at policies in relationship to other policies when evaluating a given project. This direction is
13 consistent with long-standing doctrines of statutory construction.

14 10. Courts construe an act as a whole giving effect to all the language used,
15 considering all provisions in relation to each other and, if possible, harmonizing all to insure
16 proper construction of each provision. *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138
17 Wn.2d 699, 708, 985 P.2d 262 (1999); *Newschwander v. Teachers' Retirement System*, 94
18 Wn.2d 701, 707, 620 P.2d 88 (1980). The sequence of all statutes relating to the same subject
19 matter should be considered. *Labor and Industries v. Estate of MacMillan*, 117 Wn.2d 222,
20 229, 814 P.2d 194 (1991). A statute should be read to give each word and clause effect so no
21 part is rendered meaningless or superfluous. *Hangartner v. Seattle*, 151 Wn.2d 439, 451, 90
22 P.3d 26 (2004). In addition, deference to an agency's interpretation of its own regulations is

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1 appropriate. *Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 593, 90 P.3d
2 659 (2004); *Postema v. PCHB*, 142 Wn.2d 68, 86, 11 P.3d 726 (2000).

3 11. In the present case, the terms of the Comprehensive Plan are not in irreconcilable
4 conflict with the TMC. The Comprehensive Plan contains primarily aspirational language
5 encouraging the protection of single-family residential uses. The TMC provisions allowing
6 expanded uses for historic structures are consistent with the goal of protecting single-family
7 neighborhoods because they specifically require conditions that assure compatibility with the
8 surrounding area. The *Weyerhaeuser v. Pierce County* case is instructive in this instance. After
9 finding that the County was required to examine consistency with Comprehensive Plan
10 provisions, the court found that a large regional landfill was consistent with the Rural-
11 Residential designation in the Comprehensive Plan, observing that the plan was “broad and
12 conceptual in nature.” *Weyerhaeuser* at 43. The Court acknowledged that a large landfill was
13 not a “residential use” but nevertheless concluded that a proposal to construct a regional landfill
14 was not inconsistent with the rural-residential designation in the Comprehensive Plan.
15 Similarly in this case, the broad protection offered residential neighborhoods in the
16 Comprehensive Plan is properly harmonized with the very specific provisions of the zoning
17 code allowing alternative uses of historic structures. This consistency is assured by imposing
18 conditions on any historic structure approval adequate to assure compatibility with residential
19 uses in the neighborhood.

20 12. Friends and McRoberts stress that the language in the North End Neighborhood
21 Plan even more distinctly states that commercial uses and other incompatible uses shall not be
22 allowed to encroach on single-family neighborhoods. *North End Neighborhood Goals and*

1 *Policies Goal NE-1.* When this language is read in concert with the sentences preceding it,
2 which discuss concentration of multi-family residential uses along transportation corridors and
3 the need to accommodate additional residents while maintaining the unique sense of place
4 reflected in the community vision, the language can be seen as part of the larger effort to assure
5 compatibility between uses in and around residential neighborhoods. Moreover, the North End
6 Neighborhood Policies also contain two policies addressed to historic preservation.

7 **NE-1.5 Historic Preservation**

8 Preserve and protect existing historic homes and structures.
9 Discourage demolition of properties listed on, or eligible to be
10 listed on, the National Register of Historic Places and the Tacoma
Landmarks Register through the adoption of effective regulations
and policies governing City review of projects affecting historic
properties.

11 **NE-1.6 Historic Building Replacement**

12 Allow designated historic buildings that are damaged or destroyed
13 and are legally non-conforming to area regulations to rebuild
within their existing footprint, provided the new structure complies
with appropriate building and fire codes.

14 The North End Neighborhood Goals and Policies reflect the same dual objectives of preserving
15 residential uses and preserving historic structures that appear in the generally applicable
16 provisions of the Comprehensive Plan.

17 13. Accordingly, the proposed assembly use of the subject property is not prohibited
18 by the terms of the Comprehensive Plan as long as the use is conditioned to assure protection of
19 residential uses and compatibility with the neighborhood.

20 14. The next legal issue is whether the CUP granted by Director Huffman has been
21 conditioned adequately to assure protection of the neighboring residential uses. The neighbors
22 contend the conditions do not do enough to protect their peaceful enjoyment of their homes. By

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Tacoma Municipal Building
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1 contrast, Northwest Baptist argues that many of the conditions the City imposed on the project
2 to achieve the desired compatibility are unnecessary and unworkable. The record contains
3 extensive evidence about the conflicts that have occurred between the neighbors' use of their
4 homes and the Applicant's use of the site for wedding events. During a number of weddings,
5 noise of various kinds has traveled beyond the site and into the neighborhood. Parking for the
6 weddings has frequently lined both sides of the nearby streets, leading to difficult access for
7 homeowners and noise impacts as people return to or congregate by their vehicles. Some
8 wedding guests have engaged in raucous behavior and used rough language along the sidewalks
9 in the neighborhood.

10 15. Part of the noise problem has been caused by Blue Ribbon honoring the terms of
11 wedding contracts entered into a year or more in advance of the scheduled event rather than
12 observing the City's directives. Blue Ribbon was not successful in modifying all of the existing
13 contracts to incorporate the more restrictive rules the City was requiring after July 2013. As a
14 result, it is difficult to use past experience at the site as a strong indicator of whether a wedding
15 conducted in compliance with all the terms of the CUP would disrupt the neighborhood. The
16 City reasons that a number of weddings have been held that did not result in neighbor
17 complaints, thereby indicating that wedding uses could be consistent with neighborhood uses.
18 This reasoning is supported by certain inspection trips to the site that did not identify noise
19 problems or violations. Compatibility will be a function of limiting noise, activity, and parking
20 impacts emanating from the Weyerhaeuser site. The terms of the CUP address these concerns.

21 16. Parking is one of the major objections expressed by residents of the neighborhood.
22 The TMC specifically exempts individually listed historic buildings and sites, such as the

1 Mansion property from “all parking quantity requirements.” *TMC 13.06.510.d*. However, the
2 Director included parking requirements in the CUP as a measure designed to mitigate impacts
3 from the assembly use and to improve compatibility with the residential neighborhood. The
4 CUP addressed parking by limiting the size of events to 57 guests based upon the 24 parking
5 spaces currently available on the site. This calculation includes five spaces for event staff and
6 19 spaces for vehicles carrying an average of three persons.⁶ As additional parking is
7 completed the number of guests is increased by three for each new parking space. This parking
8 plan will allow guests to park on the site rather than in the surrounding neighborhood. The
9 weight of the evidence supported the use of an average of three occupants per vehicle in
10 considering parking needs. On-site parking will eliminate the difficulty residents of the area
11 have reported with access and will prevent congregating around vehicles in the street during or
12 after the event. Parking on-site will avoid the problems neighbors have experienced from on-
13 street parking for wedding events. The CUP condition limiting events to 150 guests will also
14 prevent the need for guests to park on the nearby streets.

15 17. Several of the CUP conditions address the issue of noise. Limits on the hours of
16 events, a prohibition on amplified music at outdoor events, restricting food and beverage
17 service to indoor locations, restricting dancing and amplified entertainment to indoor areas, and
18 a statement that all events must comply with the applicable noise code requirements are
19 designed to contain the majority of the noise generated by wedding events to the site. A further
20
21

22 ⁶ Friends argue that parking must be reserved for residents of the apartments on the site. Reserved parking is not legally required for these existing residential uses. The City was justified in mitigating parking concerns based on the parking needs of the assembly use under consideration in the CUP application.

1 condition requiring Northwest Baptist to construct a noise mitigating wall between the site and
2 the McRoberts property has been included to address impacts specific to their immediately
3 adjoining property. The noise experts' testimony supports the validity of placing
4 noise conditions upon the wedding operations in the CUP. The simulated noise levels
5 contained in the expert report of Ms. Weibusch demonstrate that wedding events subject to the
6 CUP restrictions could use some level of amplification for wedding ceremonies and still meet
7 the requirements set forth in the governing noise code sections. Northwest Baptist, however,
8 would need to consistently enforce identified limits on amplified noise to remain in
9 compliance.⁷ To avoid noise code violations, all cheering and hollering would need to be
10 confined to interior spaces. This could prove difficult to control in a wedding environment. If
11 noise code violations are prevented, the wedding events will be less likely to disturb the
12 residential neighborhood.

13 18. At this point, the neighbors are skeptical that the conditions in the CUP can be, or
14 will be, consistently observed. Weddings are festive occasions with much conversation and
15 laughter. The service of alcohol and the common use of a DJ for dancing add to the festivities
16 and the attendant noise. Confining guests to indoor areas for eating, drinking, dancing, and
17 toasts may be very difficult to achieve during warm summer evenings. If the limits in the CUP
18 are not observed, the neighbors have a justified fear that they will be disturbed by noise from
19 the Mansion property. While the CUP contains conditions that are designed to effectively
20 avoid disturbance of the neighbors, compliance with those conditions will be critical to the
21

22 ⁷ The noise simulations indicate that a noise violation would not occur if amplification in the Rose Garden area is limited to 72 dBA at the center point with speakers pointing away from the McRoberts residence. Accordingly, music for the wedding ceremony, consistent with the 72 dBA limit can be allowed while meeting the noise code.

1 preservation of the residential uses in the area and the ongoing validity of the premise
2 underlying the CUP.

3 19. The CUP contains a number of other conditions regarding assembly use of the
4 facility that have not been in particular controversy relating to subjects such as fire lane access,
5 required code analysis of Haddaway Hall, and recording an easement for a public storm line in
6 the area. These conditions are reasonable terms of the CUP and should be retained.

7 20. Northwest Baptist has challenged several of the conditions included in the CUP
8 contending they are unnecessary, unsupported by legal authority, impracticable, or in need of
9 further refinement. Northwest Baptist initially opposed the condition requiring Landmarks
10 Preservation Commission approval for "any future modifications to the property," but that
11 appeal was withdrawn during hearing through Ex. NB-45. Northwest Baptist seeks rewording
12 of Condition 2 relating to the Greenhouse on site to add repair as an option and adding wording
13 subjecting the plan of action to review and approval of the Landmarks Preservation
14 Commission. Given the costs that may accompany restoration versus repair of the Greenhouse,
15 it is reasonable to allow an option to explore repair. The requested modification to Condition 2
16 is appropriate. Additional language clarifying the time for action is important to insure
17 progress is made in a reasonable fashion. Friends and McRoberts have questioned whether the
18 assembly use will fulfill the goal of preserving the Mansion property. Northwest Baptist
19 contends that use as a wedding venue will necessitate good upkeep of the property to assure it is
20 attractive as a site for weddings and associated receptions. The repair/restoration of the
21 Greenhouse and the other improvements that will be implemented to meet Code, the
22 involvement of the Landmarks Preservation Commission in any alterations, together with the

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1 importance of retaining a beautiful setting for weddings will make preservation of the historic
2 site more likely as a result of the proposed assembly use.

3 21. Northwest Baptist seeks a modification to the hours of operation. The CUP limits
4 hours of operation on Sunday through Thursday to 8 a.m. to 8:00 p.m., including all time for
5 set-up and clean-up. On Friday and Saturday, the hours of operation are extended to
6 10:00 a.m. to 10:00 p.m. including all time for set-up and clean-up. Northwest seeks a
7 modification to exclude set-up and clean-up from the time limits on events. Cleaning would be
8 limited to staff only. The testimony did not demonstrate strong opposition to this type of
9 change, however, it was noted that it is easier to enforce an absolute end time than to allow staff
10 to stay on for clean-up. Given that the condition is in place to assure that crowds disperse at a
11 reasonable hour and the lack of any information indicating that the staff involved in clean-up
12 generate objectionable noise, this modification is reasonable and will be granted. This
13 modification will not impact the compatibility of this assembly use with the surrounding
14 residential uses.

15 22. Northwest Baptist is requesting a modification to the end time for alcohol service.
16 In Condition 7, the original CUP required alcohol service to cease 30 minutes prior to the end
17 of an event. This condition was modified on reconsideration to require that alcohol service
18 close one hour prior to the end of the event. Northwest Baptist is suggesting that the condition
19 should be modified to allow a last call for alcohol 40 minutes prior to the end of the event and
20 the bar closing 30 minutes prior to the end of the event. No particular testimony or evidence
21 was provided addressing this condition by any of the parties. The Director's reconsideration
22 references the limitations imposed at a similar venue. In the absence of any evidence providing

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1 a further basis for setting a timeframe for terminating alcohol service, the Director's decision on
2 reconsideration is properly upheld.

3 23. Northwest Baptist is seeking a modification to Condition 8 that would change the
4 prohibition on outdoor dining, food service, and beverage service to allow outdoor dining for
5 150 people with no amplification of music or the spoken word. *Ex. NB-45*. The condition
6 requiring indoor dining and beverage service is designed to result in reduced noise levels in the
7 neighborhood. While the noise simulation data seemed to provide some support for the
8 proposition that dining on the terrace would not cause an actual noise code violation at the
9 property line, neighbors testified that significant levels of activity on the terrace generated
10 continuous noise that could be heard in the area and intensified as the evening progressed. The
11 noise problems at weddings were not restricted to amplified music. In fact, noise from
12 continuous conversation and laughter was of particular concern to impacted neighbors.
13 Animated levels of continuous conversation were noted for long periods of time during an
14 event and they add a temporal element to the raw dBA levels experienced by neighbors. The
15 outdoor dining prohibition is designed to prevent noise impacts from traveling off the site to
16 neighboring properties for extended periods of time and Northwest Baptist did not demonstrate
17 that dining and extended conversation outdoors can be undertaken without undue noise impacts
18 to the surrounding area, even if a technical noise violation is avoided.⁸ Condition 8 will not be
19 modified.

20 24. Northwest Baptist is requesting a change to Condition 9 which states that no
21 amplified music may be utilized during outdoor weddings. Northwest Baptist is asking that
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⁸ Testimony indicated that this condition was not intended to address casual eating or drinking by guests who wander onto the veranda, but was designed to prevent seated dining service at tables on the deck.

1 amplification be permitted outdoors only during wedding ceremonies in the Rose Garden. Such
2 amplification would be restricted to use of a sound system provided by the venue with an
3 output limit of 72 dBA, with speakers oriented toward the Mansion. The requested
4 modification also indicates no brass instruments would be permitted outdoors. The noise
5 expert testimony indicated that sound at the level requested (72 dBA) would not result in a
6 noise violation at the property line. In addition, the music would be limited to a brief prelude
7 and a recessional, so the length of time sound would be experienced is brief.⁹ Use of music at
8 the beginning and end of a wedding ceremony is traditional, reasonable and usually inoffensive
9 in nature. Accordingly, a modification to Condition 9 is reasonable.

10 25. Sound emanating from the Rose Garden appears to be a problem primarily for the
11 McRoberts' residence. The testimony from noise experts indicated that a noise violation would
12 not occur for Rose Garden sound at the 72 dBA level. McRoberts' noise expert indicated that
13 the sound below the noise code violation levels might be subject to regulation under the
14 nuisance provisions of TMC 8.12.060. McRoberts has cited two particular sections of TMC
15 8.12.060 as grounds for finding noise from the Rose Garden would constitute a nuisance:

16 (C) Yelling, shouting hooting, whistling or singing on or near the
17 public streets, particularly between the hours of 11:00 p.m. and
18 7:00 a.m., or at any time and place so as to unreasonably disturb or
interfere with the peace, comfort and repose of owners or
possessors of real property;

19 (D) The creation of frequent, repetitive or continuous sounds
20 which emanate from any building, structure, apartment, or
condominium, which unreasonably interfere with the peace,
21 comfort, and repose of owners or possessors of real property, such
as sounds from audio equipment, musical instruments, band
22 sessions, or social gatherings.

⁹ This condition would preclude the rehearsal of live music in the Rose Garden prior to the ceremony. Any such rehearsal would need to occur indoors.

1 The limited music allowed under the Condition 9 revision would not violate the standards of
2 unreasonably interfering with the peace, comfort and repose of owners of real property. The
3 wedding processional and recessional would not involve the yelling and hooting type of activity
4 governed by (C). The ceremony music would also be unlikely to be frequent, repetitive or
5 continuous sound contemplated by (D). The sound would be limited in both volume and
6 duration. This type of music would not unreasonably interfere with enjoyment of real property
7 under TMC 8.12.060. This conclusion is based upon the additional requirement in the CUP
8 that noise standards not be violated. If live instruments (brass or otherwise) are played at a
9 level that exceeds the noise code standards at the property line, this would be a violation of the
10 CUP. In addition, impacts to the McRoberts property could be reduced by posting the Rose
11 Garden area as a "Quiet Zone" so that guests are apprised of the importance of using low voices
12 in that area.¹⁰

13 26. Northwest Baptist is seeking a related clarification to Condition 10 indicating that
14 the limited ceremony music addressed in Condition 9 would be allowed despite the general ban
15 on amplified music outdoors. In light of the modification to Condition 9, this clarification is
16 warranted.

17 27. Northwest Baptist seeks a revision to Condition 14 that would require security
18 only for events attended by more than 50 guests. Friends and McRoberts argue that the
19 condition should be modified to require that all security duties are provided by off-duty police
20 officers. This position is based in part on the ineffective control private security has provided at
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22 ¹⁰ Dr. Bruck expressed the opinion that clapping at the close of the wedding ceremony would create a noise code violation. Any such noise would be extremely limited in duration and should not impair reasonable use of the adjoining property.

1 many of the weddings held on the site in the past three years. Neighbors believe that off-duty
2 police would provide advantages not available with private security personnel. They assert that
3 officers would provide the City with a clear view of what is really happening at the events,
4 which has been difficult to obtain because Code Enforcement personnel do not typically work
5 on weekends. Officers are also viewed as more authoritative in dealing with any illicit activity
6 that might occur. The goal of the condition is to assure security is available to monitor
7 compliance with the law and rules applicable to the event. This duty is important to
8 maintaining compatibility with the neighborhood. Accordingly, Condition 14 shall be modified
9 to specify that security will be provided by off-duty Tacoma Police Officers for all events
10 attended by more than 30 guests.¹¹

11 28. Condition 15 requires Northwest Baptist to construct a wall to diminish sound
12 transmission between events at the Mansion and the McRoberts property to the north. The
13 condition was modified on reconsideration to require the Applicant to consult with an
14 acoustical engineer and "incorporate all recommendations reasonably aimed at reducing off-site
15 impacts." The condition required the wall and landscaping to be installed within six months of
16 the effective date of the decision. Northwest Baptist proposes alternative language for the
17 condition bringing the issue of cost into the equation. The proposed language also deletes the
18 requirement for landscaping from the Condition and adjusts the timing to be six months from
19 final building permit approval. McRoberts objects to the adequacy of the wall condition,
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22 ¹¹ The parties have contested the appropriate threshold number for required security. Northwest Baptist is seeking an increase to events with 50 people. Given the problems with compliance and crowd control experienced at the site, increasing the threshold above 30 people is unwarranted. At the same time professional security is not needed for small, more intimate gatherings such as a 30 guest event.

1 proposes construction of two walls, and contends any wall plans should be subject to review by
2 the parties impacted.

3 29. Evidence from the noise experts in the case established that to be effective a wall
4 for noise attenuation must be near the source or near the receiver. McRoberts, understandably,
5 does not wish to have an extremely high wall on his property line shading his outdoor space.
6 He proposes an alternative location near the Rose Garden, which would presumably be
7 designed to minimize sound by being located near the source. Such a location may not be as
8 effective as a wall along the property line in protecting his outdoor area from noise generated at
9 other locations within the Mansion property. Northwest Baptist's expert concluded that a wall
10 along the Mansion veranda would do very little to reduce noise reaching the McRoberts
11 property. McRoberts' expert thought a wall at the veranda could have some benefit. The
12 Condition addressing this wall should encompass expert consultation on design, some
13 consideration of financial feasibility, input from the affected neighbor to the north, and design
14 consideration from the Landmarks Commission. Landscaping of the wall area would be
15 voluntary if the wall is located significantly south of the property line with McRoberts. If the
16 wall is on the McRoberts property line, reasonable landscaping should be provided.

17 30. Northwest Baptist objects strongly to CUP Condition 20, which limits the term of
18 the CUP to five years and requires Northwest Baptist to file a new CUP application at that time.
19 Northwest Baptist contends there is no legal authority for the five-year limitation and that it is
20 unreasonable to require significant capital investment in the property with no assurance that the
21 use can continue long-term. The City indicated that it wanted an opportunity to fully review the
22

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1 matter at the end of five years to determine whether the use is operating in a manner compatible
2 with the residential neighborhood.

3 31. Friends and McRoberts point to the five-year duration for conditional use permits
4 contained in TMC13.05.020 and TMC 13.05.070 as a basis for the condition. The cited Code
5 provisions contain a similar five-year term for variances and site approvals, plats, binding site
6 plans, and boundary line adjustments. The five-year expiration in these instances is the outside
7 limit for completing the steps of the approval involved. For instance, a person obtaining
8 approval for a variance allowing construction within a setback must complete the project within
9 five years. The five-year limit does not mean that the approved structure can only be left
10 standing for five years or that a new variance must be obtained after five years. The City,
11 through Associate Planner Philip Kao, indicated that this is the standard interpretation of the
12 meaning for limits contained in these code provisions.

13 32. The Director has the authority under TMC 13.05.040.B to "attach any reasonable
14 conditions found necessary to make the project compatible with its environment, to carry out
15 the goals and policies of the City's Comprehensive Plan, including its Shoreline Master
16 Program, or to provide compliance with applicable criteria or stands set forth in the City's Land
17 Use Regulatory Codes." *TMC 13.05.040.B*. Setting limits on the duration of use and
18 subsequent removal of structures is listed as a specific type of condition within the Director's
19 authority. *TMC 13.05.040.B.7*. In this case, however, the justification given for the five-year
20 term has no relationship to the characteristics of the use, its compatibility with the
21 neighborhood, or the governing land use policies and code provisions. The requirement to
22 apply for a completely new CUP is essentially a mandatory revisiting of the same issues that are

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1 being fully examined and decided at this time. Land use decisions properly provide all parties
2 with certainty regarding the ongoing use of land. The courts of this state have consistently
3 emphasized the need for procedures that provide certainty, predictability and finality for land
4 owners and the government. See, *Durland v. San Juan County*, No. 89293-8, No. 89745, 2014
5 WA LEXIS 1136 (Supreme Court December 11, 2014)(LUPA); *Abbey Rd. Group, LLC v. City*
6 *of Bonney Lake*, 167 Wn.2d 242, 251, 218 P.3d 180(2009) (vesting). In issuing the CUP, the
7 Director has concluded that if all conditions are observed, the use will be compatible with the
8 neighborhood. If the conditions are not observed, code enforcement, up to and including
9 termination of the use, would be the appropriate vehicle for addressing noncompliance. There
10 is no legal basis or Code-related justification provided by the City for limiting the term of the
11 CUP to five years.

12 33. Northwest Baptist has suggested five new Conditions for inclusion in the CUP.
13 The Conditions include providing information about upcoming events, meetings with
14 representatives for the Appellants during the 2015 wedding season, limits on the number of
15 weddings outdoors during the period of May through September, limits on use of the Rose
16 Garden area, and City approval of the standard contract provisions relevant to the CUP
17 conditions. The proposed conditions place additional restrictions on the operation of the
18 project, accommodate better communication, and foster greater compatibility with the
19 neighborhood. No reasonable basis for excluding these conditions from the CUP has been
20 presented and the additional matters are properly incorporated into the permit. The new
21 conditions will not constitute a prerequisite to, or limitation on, City code enforcement action.
22

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1 34. The weight of the evidence supports a conclusion that the proposed assembly use
2 would be compatible with the surrounding neighborhood, if, and only if, the Applicant
3 complies with all the conditions contained in the CUP decision, as modified by this decision.
4 Weddings can be conducted in a manner that will not degrade the neighbors' enjoyment of their
5 homes. Whether the type of event necessary to comply with the applicable conditions will be a
6 successful business venture is beyond the scope of this land use decision. Under the governing
7 provisions of the TMC and the Comprehensive Plan, the CUP can only be granted on terms
8 assuring compatibility with adjacent residential uses. The CUP conditions will bring about that
9 compatibility.

10 35. Friends and McRoberts argue that the project should have been reviewed under the
11 State Environmental Policy Act (SEPA). The City did not perform SEPA analysis because the
12 project fell within a categorical exemption in the Act that applies to change of use. WAC 197-
13 11-800(6)(b). Statutory exemptions allow projects to proceed without site specific review
14 under SEPA. *Dioxin Ctr. v. Pollution Board*, 131 Wn.2d 345, 362, 932 P.2 158 (1997).
15 Controlling authority indicates the project was handled appropriately under SEPA.¹²

16 36. Friends and McRoberts have asserted that the special provisions for use of historic
17 structures should apply solely to Haddaway Hall and not the entire Mansion property. As
18 indicated above in the Findings of Fact, the application for historic landmark status
19 encompassed an area over 4 acres and not simply the residential structure. Even the home and
20 associated carriage house, greenhouse and gardens extend beyond a single tax parcel. It was
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¹² The City has stated that if future actions on the property meet SEPA triggers, environmental analysis will be required for those projects.

1 appropriate for the City to consider the entire house, buildings and grounds as part of the
2 proposed assembly use.

3 37. Friends and McRoberts insist that alcohol should not be allowed at events taking
4 place at the Mansion. The neighbors trace many of the objectionable behaviors they have
5 experienced to alcohol consumption during wedding events. The City has indicated that the
6 service of alcohol is governed by the State Liquor Control Board, rather than local authorities.
7 Northwest Baptist and Blue Ribbon Cooking are required to comply with state standards for the
8 service of alcohol at all events. These specialized rules, rather than land use conditions, are the
9 most appropriate mechanism for governing the provision of alcohol at an assembly site.

10 38. McRoberts, and to some extent Friends, contend that the wedding events
11 constitute a public nuisance or public disturbance that should not be authorized by any land use
12 approval. The TMC contains provisions identifying certain types of sounds as "public
13 disturbance" noises. *TMC 8.12.060.B*. McRoberts points to the following sections as
14 applicable to this situation:

15 (C) Yelling, shouting hooting, whistling or singing on or near the
16 public streets, particularly between the hours of 11:00 p.m. and
17 7:00 a.m., or at any time and place so as to unreasonably disturb or
interfere with the peace, comfort and repose of owners or possessors of
real property;

18 (D) The creation of frequent, repetitive or continuous sounds which
19 emanate from any building, structure, apartment, or condominium,
20 which unreasonably interfere with the peace, comfort, and repose of
owners or possessors of real property, such as sounds from audio
equipment, musical instruments, band sessions, or social gatherings.

21 The CUP conditions specifically require that all events comply with applicable noise code
22 requirements. *CUP Condition 11*. Activities in compliance with the noise code would be

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1 unlikely to violate the terms of TMC 8.12.060. Sound from music on the Mansion site would
2 be diminished by both the requirement to limit such music to the indoor areas and the
3 anticipated sound buffering wall(s). The weight of the evidence supports the conclusion that
4 activities in compliance with the terms of the CUP will not constitute a disturbance under TMC
5 8.12.060(C) or (D).

6 39. McRoberts further alleges that the conduct of wedding events at the site
7 constitutes a nuisance as that term has been recognized in the common law. McRoberts cites
8 authority for the proposition that one landowner is not permitted to use his land so
9 unreasonably as to interfere unreasonably with another landowner's use and enjoyment of his
10 land. McRoberts argues that this doctrine applies even if the activity is allowed by zoning code
11 or other permit. *See, Jones v. Rumford*, 64 Wn.2d 559, 562, 392 P.2d 808 (1964); *Riblet v.*
12 *Spokane-Portland Cement Co.*, 41 Wn.2d 249, 248 P.2d 380 (1952); *Crawford v. Central*
13 *Steam Laundry*, 78 Wash. 355, 139 Pac. 56 (1914).¹³

14 40. Application of common law nuisance decisions to the present situation is strained
15 at best. The CUP decision imposes numerous conditions on wedding events at the Mansion
16 that are designed to mitigate any impacts to the neighborhood and assure compatibility with
17 residential uses. Past events that were not conducted in compliance with the CUP conditions
18 do not establish that compliant wedding events will constitute a nuisance. To the contrary, the
19 extensive conditions are being imposed to prevent just such a problem. The evidence does not
20 support a conclusion that wedding events conducted in compliance with the CUP will create a
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22 ¹³ The cases cited by McRoberts on "nuisance per se" are not applicable to the present situation because the CUP provides a legal basis for the activity in question. Assembly use pursuant to a lawfully granted permit is not a nuisance per se.

1 nuisance by interfering with McRoberts' enjoyment of their property at the level recognized by
2 the cited case authority.

3 41. Northwest Baptist suggests that weddings are valid as an accessory use to the
4 long-standing nonconforming religious and educational use of the Mansion property. To the
5 extent Northwest Baptist is arguing that status as an accessory use in the past would authorize
6 the size and scale of wedding venue that has been proposed, the assertion is without merit.
7 Whatever nonconforming rights may have existed to conduct weddings on the property in the
8 past, the type of enterprise being planned at this point in time vastly exceeds the historic used
9 of the property for weddings. The size of the weddings, the frequency of events, the
10 substantially increased noise impacts on the neighborhood, the parking issues on surrounding
11 streets, the service of alcohol and resulting raucous behavior in the surrounding area and the
12 lengthy receptions with amplified music, amplified speeches, hollering, dancing, and singing
13 constitute a marked expansion of the use. These changes in the format and tenor of weddings
14 held on the site exceed the level of modification allowed for nonconforming uses. "A
15 protected nonconforming status generally grants the right to continue the existing use but will
16 not grant the right to significantly change, alter, extend, or enlarge the existing use." *Rhod-A-*
17 *Zalea v. Snohomish County*, 136 Wn.2d 1, 7, 959 P.2d 1024, (1998). The facts of this case
18 demonstrate significant change and enlargement of the wedding use made in the past.
19 Moreover, the nonconforming religious and education use to which the weddings were
20 arguably accessory has been discontinued and cannot form the basis for an accessory wedding
21 use. The City was correct in concluding that the wedding venue has become the primary use of
22 the property and in requiring an independent CUP permit to authorize the use.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

42. Any Finding of Fact deemed to be properly considered a Conclusion of Law is hereby adopted as such.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

DECISION

The CUP decision issued by Peter Huffman in this matter on June 13, 2014, is hereby AFFIRMED subject to the conditions contained therein as modified by the following revised and additional conditions:

Modified Conditions

Condition 2. A Plan of Action outlining a reasonably prompt timeframe for restoration or repair of the Greenhouse shall be submitted for review and approval by the Landmarks Preservation Commission. The plan shall be submitted within six months of the effective date of the CUP decision.

Condition 6. Sunday through Thursday, the hours of operations for weddings and other events, including set-up shall be limited to the hours between 8:00 a.m. and 8:00 p.m. On Friday and Saturday, the hours of operation for weddings and other events, including set-up shall be limited to the hours between 10:00 a.m. and 10:00 p.m. Staff, not to exceed four people shall be allowed to perform clean-up after the conclusion of an event. Staff shall observe quiet during clean-up efforts.

Condition 9. Amplified music may be utilized on a very limited basis during outdoor events. Amplification is permitted outdoors only during wedding ceremonies in the Rose Garden. Such amplification shall be restricted to the use of a sound system provided by Applicant, the noise output of which shall be limited to 72 dBA and which shall be oriented toward the Mansion. The wedding ceremony will include a brief prelude and recessional. Brass instruments or other instruments that exceed noise code levels shall not be permitted outdoors or in the Rose Garden during wedding ceremonies.

1 Condition 10. Dancing and amplified music from DJs, bands, or
2 similar entertainment must occur indoors. This condition does not
3 prohibit the limited music permitted during wedding ceremonies as
4 described in Condition 9.

5 Condition 14. The Applicant shall provide security utilizing off-duty
6 City of Tacoma Police Officers for all events attended by more than 30
7 guests.

8 Condition 15. The Applicant must construct a wall, or walls, designed
9 to screen the residence at 4415 North Stevens Street from noise/sound
10 emanating from the Mansion property. The wall(s) shall be
11 professionally designed with input from the Greenbusch Group or
12 comparable noise expert. The Applicant shall confer with the property
13 owners and any noise expert they have retained, when evaluating the
14 size and location(s) of the wall(s). The City will approve the design
15 and size of the project giving consideration to the cost and
16 effectiveness of the proposed structure(s). Landscaping near the
17 wall(s) will be evaluated based on the final location and its proximity
18 to the adjacent property. Permits for the wall(s) shall be obtained. The
19 wall(s) should be installed within six months of final permit approval.

20 Conditions 16 and 18 are deleted because they are no longer relevant
21 to the application.

22 Condition 20 requiring a new CUP application in five years is deleted.

Additional Conditions

The following new conditions are added to the CUP:

New Condition. The Applicant shall provide the City with a schedule
of weddings and other events taking place at the project site, and shall
send out an updated schedule as events are changed and added.

New Condition. The Applicant shall schedule one meeting per month
with the City and the representatives of the other Appellants during the
2015 wedding season. The purpose of these meetings is to evaluate
whether the permit conditions as implemented are adequately
mitigating impacts on the neighborhood. If it appears that a condition
is not workable or is not having the desired effect, the parties shall
work together in good faith to make minor modifications in the
condition to improve its effectiveness. In September 2015, the City

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

City of Tacoma
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1 will decide whether it is necessary to continue to hold meetings on a
2 monthly or less frequent basis.

3 New Condition. The Applicant shall hold no more than three
4 weddings per week outdoors during the "wedding season," typically
5 May through September. Other events shall be conducted indoors,
6 with the occasional exception not to exceed four weddings per year.

7 New Condition. Guests shall not be allowed to remain in the Rose
8 Garden area after 7:00 p.m. and shall be supervised by staff at all times
9 when in the Rose Garden. Signs shall be posted at the entrance to the
10 Rose Garden indicating it is a Quiet Zone.

11 New Condition. The Applicant will obtain the City's approval of a
12 standard contract for rental of the project site that encompasses the
13 conditions of this permit, which will then be used for booking all
14 future weddings at the property.

15 **DATED** this 4th day of February, 2015.

16 
17 **PHYLLIS K. MACLEOD, Hearing Examiner**

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

ORIGINAL

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RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the Office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be within the sole discretion of the Hearing Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Hearing Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision is appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be commenced within 21 days of the entering of the decision by the Hearing Examiner, unless otherwise provided by statute.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

City of Tacoma
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APPENDIX B

Hearing Examiner's Order denying Petitioners' Request for Reconsideration

Dated March 12, 2015



City of Tacoma
Hearing Examiner

March 12, 2015

FIRST CLASS & ELECTRONIC MAIL DELIVERY

William T. Lynn, Attorney at Law
Amanda Nathan, Attorney at Law
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Robert G. Casey, Attorney at Law
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Stephen A. Burnham, Attorney at Law
Campbell, Dille, Barnett & Smith PLLC
317 South Meridian
Puyallup, WA 98371
(steveb@cdb-law.com)

Re: ***Northwest Baptist Seminary d/b/a Corban University and Blue Ribbon Cooking, LLC v. City of Tacoma, Planning and Development Services Department (PDSD), File No. HEX 2014-027 (CUP2013-40000211241); Friends of the Historic Weyerhaeuser Mansion v. City of Tacoma, PDSD, File No. HEX 2014-029 (CUP2013-40000211241); and Shawn McRoberts and Sarah McAlister v. City of Tacoma, PDSD, File No. HEX 2014-030 (CUP2013-40000211241)***

Dear Parties,

In regard to the above referenced matters, please find enclosed a copy of the Hearing Examiner's Order on Reconsideration entered on March 12, 2015.

Sincerely,

Louisa Legg
Legal Assistant

Enclosure (1) – Order on Reconsideration

Page 2
March 12, 2015

Cc: Peter Huffman, Director, Planning and Development Services Department (PDSD), City of Tacoma /
phuffman@ci.tacoma.wa.us
Jana Magoon, Planning Manager, PDSD, City of Tacoma / jmagoon@ci.tacoma.wa.us
Philip Kao, Associate Planner, PDSD, City of Tacoma / pkao@ci.tacoma.wa.us
Vanessa Volkman, Blue Ribbon Cooking, LLC, 4301 N. Stevens Street, Tacoma, WA 98407 /
vanessa@blueribboncooking.com
Shawn McRoberts and Sarah McAlister, 4415 N. Stevens Street, Tacoma, WA 98407/
sarah@mcalisterrandassociates.com
Mimi Kray, 4205 N. Mason Street, Tacoma, WA 98407 / mjkray@aol.com
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Kevin Brubaker, Vice President for Business, Corban University, 5000 Deer Park Drive SE,
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John Gillie, The News Tribune, 1950 S. State Street, Tacoma, WA 98405 /
johngillie@thenewstribune.com

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2 **OFFICE OF THE HEARING EXAMINER**

3 **CITY OF TACOMA**

4 **NORTHWEST BAPTIST SEMINARY**
5 **D/B/A CORBAN UNIVERSITY**
6 **AND BLUE RIBBON COOKING, LLC;**
7 **FRIENDS OF THE HISTORIC**
8 **WEYERHAEUSER MANSION;**
9 **SHAWN MCROBERTS AND**
10 **SARAH MCALISTER,**

11 **Appellants,**

12 **v.**

13 **CITY OF TACOMA,**
14 **PLANNING AND DEVELOPMENT**
15 **SERVICES DEPARTMENT,**

16 **Respondent.**

17 **FILE NOS.:**

18 **HEX 2014-027 (CUP2013-40000211241);**
19 **HEX 2014-029 (CUP2013-40000211241);**
20 **HEX 2014-030 (CUP2013-40000211241);**

21 **ORDER ON RECONSIDERATION**

22
23 **THIS MATTER** came on for hearing before PHYLLIS K. MACLEOD, Hearing
24 Examiner for the City of Tacoma, on December 9, 10, 11, and 22, 2014. The City of Tacoma
25 was represented by Deputy City Attorney Jeff Capell. Northwest Baptist Seminary, Corban
26 University and Blue Ribbon Cooking, LLC (Northwest Baptist) were represented by Attorneys
27 William T. Lynn and Amanda Nathan. Friends of the Historic Weyerhaeuser Mansion
28 (Friends) was represented by Attorney Robert Casey. Shawn McRoberts and Sarah McAlister
29 (McRoberts) were represented by Attorney Stephen Burnham. The Findings of Fact,
30 Conclusions of Law, and Decision in the case were issued by the Hearing Examiner on

31 **ORDER ON RECONSIDERATION**

32 **- 1 -**

ORIGINAL

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1 February 4, 2015, and approved a Conditional Use Permit (CUP) allowing assembly uses at the
2 Weyerhaeuser Mansion property. The CUP was subject to a number of Conditions of approval.
3 McRoberts filed a motion on February 18, 2015, requesting reconsideration of certain portions
4 of the decision. The City of Tacoma and Northwest Baptist responded to the request for
5 reconsideration and McRoberts filed a reply.

6 ANALYSIS

7 McRoberts initially challenges the Findings of Fact (Finding 5) and Conclusions of Law
8 (Conclusion 36) as they relate to whether the entire site or just the Haddaway Hall building
9 should be considered as a historic landmark. The facts and the law relevant to this argument
10 have not changed. McRoberts' request for reconsideration on this point is based on the same
11 factual and legal arguments presented at the hearing. The contentions set forth were fully
12 reviewed during the original consideration of the case and were substantively addressed in the
13 Hearing Examiner's decision. No new information or authority was presented on
14 reconsideration that warrants a different analysis or result on this point.

15 The second issue raised by McRoberts seeks modification of the CUP condition of
16 approval requiring off-duty police officers to provide security at events with more than 30
17 guests. (Condition 14). The condition currently states:

18 Condition 14. The Applicant shall provide security utilizing off-duty
19 City of Tacoma Police Officers for all events attended by more than 30
20 guests.

20 McRoberts would like an additional requirement that the officer walk the boundary of the
21 property every 30 minutes to determine if continuous noise is audible at the property boundary.
22 Northwest Baptist asserts that allowing the officer to use discretion in monitoring the property

1 is preferable to dictating a specific duty to walk the site boundary at 30 minute intervals.
2 Northwest Baptist also mentioned the difficulty the City would have enforcing such a
3 condition.

4 The purpose of having security for events held at the Weyerhaeuser Mansion is to help
5 insure that the conditions governing assembly uses contained in the CUP are being observed.
6 This responsibility could involve a number of different duties depending on the particular event
7 and the type of behavior that is encountered. It would not be desirable to dictate the precise
8 methods to be used by the officers on duty. At the same, it would be helpful to add language to
9 Condition 14 clarifying that walking the property boundary would typically be a part of the
10 responsibility of personnel providing security at Mansion events. The condition will be revised
11 to read:

12 Condition 14. The Applicant shall provide security utilizing off-duty
13 City of Tacoma Police Officers for all events attended by more than 30
14 guests. The security officer shall monitor activities for compliance
15 with governing laws, regulations, and CUP conditions. Compliance
16 monitoring shall include walking the perimeter of the property
17 periodically.

18 McRoberts also seeks revision of Condition 15, relating to the construction of a noise
19 reduction wall(s). Condition 15 currently reads:

20 Condition 15. The Applicant must construct a wall, or walls, designed
21 to screen the residence at 4415 North Stevens Street from noise/sound
22 emanating from the Mansion property. The wall(s) shall be
professionally designed with input from the Greenbusch Group or
comparable noise expert. The Applicant shall confer with the property
owners and any noise expert they have retained, when evaluating the
size and location(s) of the wall(s). The City will approve the design
and size of the project giving consideration to the cost and
effectiveness of the proposed structure(s). Landscaping near the
wall(s) will be evaluated based on the final location and its proximity

1 to the adjacent property. Permits for the wall(s) shall be obtained. The
2 wall(s) should be installed within six months of final permit approval.

3 McRoberts is concerned that under the current language of Condition 15 the Applicant might
4 design a huge wall along his property line that would negatively affect the use and enjoyment of
5 his property. He also wants to insure that the wall will meet all applicable code requirements.
6 The revisions to Condition 15 that McRoberts is requesting include requirements on where the
7 walls will be placed and how the wall(s) will be landscaped.

8 Condition 15 was intentionally worded to allow some flexibility in the design of the
9 sound reduction wall(s). Northwest Baptist and McRoberts each presented detailed testimony
10 from noise experts. These professionals are in a much better position than the Hearing
11 Examiner to evaluate design alternatives and develop a workable solution. The Hearing
12 Examiner has no basis to impose detailed direction on the placement of any noise reduction
13 installation. As to the concern over code compliance, the existing condition requires that
14 permits be obtained for the construction work. Code compliance is evaluated as part of the
15 permit process. McRoberts' concerns are adequately addressed by the existing language of
16 Condition 15 and the request to modify it is properly denied.

17 Based upon the foregoing analysis, the Hearing Examiner enters the following:

18 **ORDER**

19 McRoberts' Request for Reconsideration is granted in part. Condition 14 of the
20 Conditional Use Permit (CUP) is modified to read:

21 The Applicant shall provide security utilizing off-duty City of Tacoma
22 Police Officers for all events attended by more than 30 guests. The
security officer shall monitor activities for compliance with governing

ORDER ON RECONSIDERATION

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ORIGINAL

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1 laws, regulations, and CUP conditions. Compliance monitoring shall
2 include walking the perimeter of the property periodically.

3 In all other respects the request for reconsideration is denied.

4 DATED this 12th day of March, 2015

5 
6 PHYLLIS K. MACLEOD, Hearing Examiner

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10 **NOTICE**

11 **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

12 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing
13 Examiner's decision is appealable to the Superior Court for the State of Washington. Any
14 court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing
15 Examiner shall be commenced within 21 days of the entering of the decision by the
16 Hearing Examiner, unless otherwise provided by statute.

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ORDER ON RECONSIDERATION

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APPENDIX C

Pierce County Superior Court - Judge Chushcoff Decision

Dated May 2, 2016

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5/3/2016



15-2-07340-6 46820151 CTD 05-03-16



**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

SHAWN McROBERTS & SARAH
McALISTER, husband and wife,
and
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION, a
Washington non-profit corporation

Petitioners/Plaintiffs,

vs.

CITY OF TACOMA, a Washington
municipal corporation,

Respondent/Defendant.

NORTHWEST BAPTIST SEMINARY,
d/b/a CORBAN UNIVERSITY, a
Washington nonprofit corporation, and
BLUE RIBBON COOKING, LLC,
a Washington limited liability company,

Property Owner/Applicant.

NO. 15-2-07340-6

(consolidated with #15-2-07362-7)

DECISION OF THE COURT

I. Review of Land Use Decision Sought

The Petitioners, McROBERTS & SARAH McALISTER, and members of co-Petitioner FRIENDS OF THE HISTORIC WEYERHAEUSER MANSION, LLC, ("Petitioners") are neighboring property owners or residents to the subject property – several parcels located at 4301 North Stevens Street, Tacoma, Washington.

Petitioners seek review of a decision of the City of Tacoma's Hearing Examiner dated February 4, 2015 and of the Hearing Examiner's Order denying reconsideration dated March 12, 2015. The decision affirms and modifies in part a decision by the City of Tacoma's ("City") Director of Planning and Development Services issued September 10, 2014 granting a conditional use permit for the property of NORTHWEST BAPTIST SEMINARY, d/b/a CORBAN UNIVERSITY, a Washington nonprofit corporation ("Corban").

II. Factual Background

The factual background is not significantly in dispute. The key elements are:

- 1) John and Anna Weyerhaeuser built a large, 32-room residence known as Haddaway Hall on the subject property in 1923. The site included a Carriage House and Greenhouse.
- 2) It is unclear precisely when but by 1942 the property was sold to the Sisters of St. Dominic, who used the property as a novitiate and school for nuns. A chapel building (circa 1954) and an educational or dormitory building (circa 1959) were added during the Sisters ownership.
- 3) In 1975 the property was sold to Northwest Baptist College for use as a seminary. Weddings were also occasionally conducted as an accessory use. By the terms of event contracts for these events neither alcohol nor dancing was allowed; Christian music that could not be excessively loud was encouraged. There is evidence in the record that dancing began to be permitted by the College as early as 2009.
- 4) In 1992 Haddaway Hall was designated a historic landmark by the City.

- 5) The property is located in an established residential neighborhood of single-family homes. The City has designated it an R-2 VSD Single Family Dwelling District.
- 6) The College merged with Corban University in 2010.
- 7) In 2012, to increase its income, Corban entered into an agreement with Blue Ribbon Cooking, LLC ("Blue Ribbon") to be the exclusive caterer for wedding receptions on the property.
- 8) On March 22, 2012 the City advised Corban that "event rentals" can proceed "because it is still operating as a seminary, the use in which it has legal non-conforming rights." AR 630
- 9) The property proved to be a popular wedding venue. The number of weddings held on the premises escalated substantially with 2-3 weddings per weekend during the months of May through September. These events commonly had 100-150 guests. The historic limitations on alcohol use, dancing and music were no longer observed.
- 10) The neighbors experienced a variety of unpleasant effects because of the increased use of the property as a wedding venue. Among them:
 - Increased noise from amplified music, speeches and toasts as well as periodic clapping or cheering emanating from the property. The noise was more problematic during warm evenings when neighbors would often want to open windows to cool their homes.
 - Increased noise from wedding reception guests walking in the neighborhood loudly talking relatively late at night as they would return to their cars.
 - Unpleasant encounters between neighbors and wedding guests who were intoxicated.
 - Wedding reception guests would litter or worse on neighboring property; property damage was reported by neighbors.
 - Off-street parking issues on nearby streets were significant.

- 11) Neighbors made numerous complaints to City officials and to police about these conditions. Confrontations between neighbors and wedding guests began to occur.
- 12) By July 2013 the City advised Corban that the impacts of this use “are way beyond what the community is used to” and that it would have to apply for a CUP. AR 3431
- 13) In October 2013 Corban filed for a CUP. Meanwhile, weddings continued to be held and the City attempted to obtain voluntary restrictions on wedding reception activities. While Corban was cooperative, it felt limited in how much it could respond to such restrictions owing to its prior obligations to honor wedding event contracts signed months earlier. The result: continued friction with the neighbors.
- 14) The resulting CUP “contains an extensive list of conditions designed to assure the operating the Mansion for assembly uses will be compatible with the surrounding neighborhood.” Findings of Fact No. 21, Hearings Examiner Decision of February 4, 2015. AR 203

III. Conditional Use Permit

While the entire property consists of something more than six acres, the conditional use permit applies to a part of the subject property comprising approximately 4.7 acres. The conditional use permit application is summarized in the decision of the Planning and Development Director at p. 526 of the administrative record (“AR”), to-wit:

SUMMARY OF REQUEST:

The applicant has requested a Conditional Use Permit to allow an assembly facility (event center) on a historic property located in the “R-2 VSD” Single-Family Dwelling District with View-Sensitive Overlay. The *Tacoma Municipal Code* requires approval of a Conditional Use Permit for such a use on historic properties located in residentially zoned neighborhoods.

The Director's decision sets forth the request more specifically at AR 527-8:¹

Proposal:

1. The applicant has requested a Conditional Use Permit (CUP) to allow the addition of privately run events (primarily weddings) at Corban University.
2. The weddings, events and receptions (hereafter "events") would occur in the existing chapel, inside the historically designated Haddaway Hall mansion, and/or on the surrounding grounds.
3. The applicant proposes to have events up to seven days a week but primarily on Thursdays, Fridays, Saturdays, and Sundays. As proposed by the applicant, events would end no later

than midnight on Friday and Saturdays and 11:00 p.m. the remainder of the week. No events would occur outdoors after 9:00 p.m. Last call for alcohol, when served, is proposed to be 10:45 p.m.

4. Parking for fifty-five (55) vehicles is proposed on-site. This would require the development of 21 additional parking stalls.
5. The application characterizes the events as accessory² to the existing seminary. It is true that weddings have historically been held on the site as an accessory use to the seminary. However, based on the increase in total number of events, increase in operational hours and days, and addition of on-site parking, the Director is reviewing the proposal as the addition of a new use, in this case an assembly facility³ rather than as an accessory use associated with a religious assembly/educational facility.
6. Though there is some debate about the continued use of the site by Corban University⁴, the application does indicate that an educational use is expected to be maintained on the site.

The Conditional Use Permit ("CUP") conditions approved by the Director are set forth at AR 539-40:

¹ The footnotes to the decision quoted above:

² *TMC 13.06.700.A* defines an accessory use as a use that occupies less than 50 percent of the building or site square footage, is incidental to the main building or principal use, and is located on the same lot as the principal use. In no case shall such accessory use dominate in area, extent, or purpose the principal lawful use or building. The *TMC* does not define incidental. When a term is not defined in the *TMC*, Section 13.06.700 directs us to a Webster's Dictionary published in the last ten years. Webster's II New College Dictionary, Third Edition, published in 2005, defines incidental as being "of a minor, casual, or subordinate nature."

³ *TMC 13.06.700.A* defines an assembly facility as privately operated facilities for the principle purpose of public meetings and social gatherings (including incidental recreation), including community halls, union halls, exhibition halls, social clubs, and youth centers. This use shall not include stadiums or public or quasi-public parks, recreation, or open space.

⁴ Neighbors have advised the City that Corban University vacated the property in Spring of 2014. The applicant has not confirmed or denied this information. Because the City does not characterize the events as accessory to the university, the departure of the university does not materially change the facts.

Conditions:

1. Any future modification to the property or historic structures, including development of on-site parking, shall require review and approval by Landmarks Preservation Commission.
2. A Plan of Action shall be submitted to the Historic Preservation Officer for restoration of the greenhouse. This Plan must be submitted within six months of the effective date of this decision.
3. Based on the existing 24 parking spaces dedicated for the assembly facility use, weddings and other events shall be limited to 57 guests (assumes 19 spaces for guests and five spaces for event staff).
4. Upon completion of additional on-site parking areas, the number of guests may be increased by three for every parking space provided.
5. Events in excess of 150 guests shall be prohibited.
6. Sunday through Thursday, the hours of operations for weddings and other events, including set-up and clean-up, shall be limited to the hours between 8 a.m. and 8:00 p.m. Friday and Saturday, the hours of operation for weddings and other events, including set-up and clean-up, shall be limited to the hours between 10:00 a.m. and 10:00 p.m.
7. Alcohol service shall end 30 minutes prior to the end of the event.
8. All dining, food service, beverage service and related activities shall occur indoors.
9. No amplified music may be utilized during outdoor events.
10. Dancing and amplified music from disc jockeys (DJs), bands, or similar entertainment must occur indoors.
11. All events must comply with applicable noise code requirements.
12. Applicant must maintain a private fire lane. The fire lane must be kept open and clear at all times to the approval of the Fire department.
13. Gates shall remain unlocked during events.
14. Applicant shall hire private security from a professional security company for all events.
15. Applicant must construct a wall and provide landscaping along the property line shared with 4415 North Stevens Street. The purpose of the wall and landscaping is to screen and buffer the residence at 4415 North Stevens Street from noise/sound. Permits for the wall and landscaping shall be obtained. The City shall approve the design and size of the wall and landscaping. The wall must be complete with the wall and landscaping installed within six months of the effective date of this decision.
16. All existing events under contract shall be modified to comply with the conditions of this Conditional Use Permit.
17. The applicant shall provide the City with a copy of the amended contract demonstrating compliance with the attached conditions.
18. Applicant shall provide to the City the dates and times of all contracted wedding and event dates remaining in 2014 that do not currently comply with the above conditions with regards to indoor/outdoor activities, hours of operation, and number of guests above 57.

19. Applicant must provide code analysis on Haddaway Hall to demonstrate compliance with building code for use as an assembly facility. Code analysis shall include floor plans, current use of the space and must show relative occupant load calculations on drawings.
20. This Conditional Use Permit is valid for five years from the effective date of the decision. At the end of five years, the applicant shall be required to apply for and receive approval of a new Conditional Use Permit.
21. Applicant shall record an easement for the existing public storm line located in the southeastern portion of the site to the approval of the City's Real Property Services Division.
22. The decision set forth herein is based upon representations made and information submitted, including development plans and proposals, submitted to the Land Use Administrator. Any substantial change(s) or deviation(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Land Use Administrator, and may require additional permitting, public notification and comment.

The Director subsequently modified condition 7 to read "[a]lcohol services shall end 1 hour prior to the end of the event." On February 4, 2015 Hearing Examiner Macleod determined to modify/add conditions to the CUP, AR 235-37:

Modified Conditions

Condition 2. A Plan of Action outlining a reasonably prompt timeframe for restoration or repair of the Greenhouse shall be submitted for review and approval by the Landmarks Preservation Commission. The plan shall be submitted within six months of the effective date of the CUP decision.

Condition 6. Sunday through Thursday, the hours of operations for weddings and other events, including set-up shall be limited to the hours between 8:00 a.m. and 8:00 p.m. On Friday and Saturday, the hours of operation for weddings and other events, including set-up shall be limited to the hours between 10:00 a.m. and 10:00 p.m. Staff, not to exceed four people shall be allowed to perform clean-up after the conclusion of an event. Staff shall observe quiet during clean-up efforts.

Condition 9. Amplified music may be utilized on a very limited basis during outdoor events. Amplification is permitted outdoors only during wedding ceremonies in the Rose Garden. Such amplification shall be restricted to the use of a sound system provided by Applicant, the noise output of which shall be limited to 72 dBA and which shall be oriented toward the Mansion. The wedding ceremony will include a brief prelude and recessional. Brass instruments or other instruments that exceed noise code levels shall not be permitted outdoors or in the Rose Garden during wedding ceremonies.

Condition 10. Dancing and amplified music from DJs, bands, or similar entertainment must occur indoors. This condition does not prohibit the limited music permitted during wedding ceremonies as described in Condition 9.

Condition 14. The Applicant shall provide security utilizing off-duty City of Tacoma Police Officers for all events attended by more than 30 guests.

Condition 15. The Applicant must construct a wall, or walls, designed to screen the residence at 4415 North Stevens Street from noise/sound emanating from the Mansion property. The wall(s) shall be professionally designed with input from the Greenbusch Group or comparable noise expert. The Applicant shall confer with the property owners and any noise expert they have retained, when evaluating the size and location(s) of the wall(s). The City will approve the design and size of the project giving consideration to the cost and effectiveness of the proposed structure(s). Landscaping near the wall(s) will be evaluated based on the final location and its proximity to the adjacent property. Permits for the wall(s) shall be obtained. The wall(s) should be installed within six months of final permit approval.

Conditions 16 and 18 are deleted because they are no longer relevant to the application.

Condition 20 requiring a new CUP application in five years is deleted.

Additional Conditions

The following new conditions are added to the CUP:

New Condition. The Applicant shall provide the City with a schedule of weddings and other events taking place at the project site, and shall send out an updated schedule as events are changed and added.

New Condition. The Applicant shall schedule one meeting per month with the City and the representatives of the other Appellants during the 2015 wedding season. The purpose of these meetings is to evaluate whether the permit conditions as implemented are adequately mitigating impacts on the neighborhood. If it appears that a condition is not workable or is not having the desired effect, the parties shall work together in good faith to make minor modifications in the condition to improve its effectiveness. In September 2015, the City will decide whether it is necessary to continue to hold meetings on a monthly or less frequent basis.

New Condition. The Applicant shall hold no more than three weddings per week outdoors during the "wedding season," typically May through September. Other events shall be conducted indoors, with the occasional exception not to exceed four weddings per year.

New Condition. Guests shall not be allowed to remain in the Rose Garden area after 7:00 p.m. and shall be supervised by staff at all times when in the Rose Garden. Signs shall be posted at the entrance to the Rose Garden indicating it is a Quiet Zone.

New Condition. The Applicant will obtain the City's approval of a standard contract for rental of the project site that encompasses the conditions of this permit, which will then be used for booking all future weddings at the property.

And, condition 14 was further revised by the Hearing Examiner on March 12, 2015, AR 155-57:

Condition 14. The Applicant shall provide security utilizing off-duty City of Tacoma Police Officers for all events attended by more than 30 guests. The security officer shall monitor activities for compliance with governing laws, regulations, and CUP conditions. Compliance monitoring shall include walking the perimeter of the property periodically.

IV. Issues Raised by Petitioners

Issues raised by this Petition:

- i. Petitioners allege Corban's application for a CUP is only made possible by invoking the subject property's designation as a historic landmark.

Petitioners' dispute that municipal code expands permitted uses of historic landmark property in an otherwise incompatible zone and, even if it does, they claim the proposed use of the property is nonetheless not consistent with the City's Comprehensive Plan.

- ii. Petitioners further allege the City's designation of the subject property as a historic landmark is limited to Haddaway Hall, the Carriage House and the Greenhouse and not to the rest of the subject property, *i.e.* the Chapel and Education/Dormitory buildings. For this reason they assert the CUP, if allowed, should be limited to that portion of the property designated as historic and not to the entire property.
- iii. Given the designation of the property as a historic landmark, Corban should have been required to reconstruct the Greenhouse and the City's Decision permits Corban to use the property prior to compliance with this condition of the CUP.
- iv. Corban should have had to comply with the State Environmental Policy Act.
- v. Corban should not have been allowed to have alcohol consumption at events at the property.
- vi. The requirement to construct a wall between the subject property and that of Mr. McRoberts and Ms. McAlister is vague and permits Corban to use the property prior to compliance with this condition of the CUP.

V. Discussion

Corban reminds us that a conditional use permit "'constitutes a recognition of a use which the ordinance permits under stated conditions.' *Texaco Refining & Marketing v. Valente*, 174 A.D.2d 674 (N.Y.S.2d 1991)." It is a use "'in compliance with, rather than in variance of, the ordinance.' *Steen v. County Council of Sussex County*, 576 A.2d 642, 646 (Del. Ch. 1989)." Response Brief of Respondent Northwest Baptist Seminary d/b/a Corban University at p. 12. And, the issuing authority must grant a conditional use permit if the applicant has satisfied the standards of the ordinance. *State ex. rel. Ogden v. City of Bellevue*, 45 Wn.2d 492, 495, 275 P.2d 899 (1954). *Id.*, at 13.

Corban argues the code specifically allows an assembly facility when considering repurposing historical sites. And Corban highlights two further points: 1) the Hearing Examiner expressed the view that “deference to an agency’s interpretation of its own regulations is appropriate”; and, 2) that in applying the zoning code and the Comprehensive Plan, “it is common for a project to involve different policies from different sections that may appear somewhat inconsistent” and that the “City did not consider the proposed assembly use by Northwest Baptist as in conflict with the Comprehensive Plan provisions when viewed as a whole.” (Emphasis added.) Conclusions of Law No. 9, Hearings Examiner Decision of February 4, 2015. AR 216;

In a nutshell, the proponents of the CUP maintain that the proposed assembly use of the subject property, as conditioned by the CUP, is consistent with the provisions of Tacoma’s land use regulations including its Comprehensive Plan for allowing alternative uses of historic structures while the Petitioners maintain the proposed use of the property is inconsistent and incompatible with their neighborhood and the City’s land use regulations.

A. Process.

CUP approvals are done by Tacoma’s Director of Planning and Development Services.

TMC 13.05.040 Decision of the Director.

B. Conditioning Land Use Approvals. When acting on any land use matter, the Director may attach any reasonable conditions found necessary to make the project compatible with its environment, to carry out the goals and policies of the City’s Comprehensive Plan, including its Shoreline Master Program, or to provide compliance with applicable criteria or standards set forth in the City’s Land Use Regulatory Codes. Such conditions may include, but are not limited to:

1. The exact location and nature of the development, including additional building and parking area setbacks, screening in the form of landscape berms, landscaping or fencing;
2. Mitigating measures, identified in applicable environmental documents, which are reasonably capable of being accomplished by the project’s sponsor, and which are intended to eliminate or lessen the environmental impact of the development;
3. Provisions for low- and moderate-income housing as authorized by state statute;

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4. Hours of use or operation, or type and intensity of activities;
 5. Sequence in scheduling of development;
 6. Maintenance of the development;
 7. Duration of use and subsequent removal of structures;
 8. Dedication of land or granting of easements for public utilities and other public purposes;
 9. Construction of, or other provisions for, public facilities and utilities. In regard to the conditions requiring the dedication of land or granting of easements for public use and the actual construction of or other provisions for public facilities and utilities, the Director shall find that the problem to be remedied by the condition arises, in whole or significant part, from the development under consideration, the condition is reasonable, and is for a legitimate public purpose. . . .

This is broad authority in the Director. The provision of such authority clearly reflects the need for flexibility in attempting to make compatible the enormous range of uses to which land may be put by the mind of mankind given the variety of historic, existing and planned future uses, as well as evolving technology, demographic and topographic diversity extant in the City.

But broad authority is not carte blanche. The Director's decisions must be channeled by the policy choice already made by the responsible authorities who adopt the ordinance(s). That "it is common for a project to involve different policies from different sections that may appear somewhat inconsistent" certainly does not make the task easier. Such prudential reasons do suggest that "deference to an agency's interpretation of its own regulations is appropriate." But if the review of the agency's decisions is to be meaningful, the system of review is also responsible to carefully assess the agency's interpretation in light of the City's land use provisions comprehensively.

B. Application of the Land Use Code.

We begin with Tacoma's Land Use Regulatory Code's own guide to its interpretation. First –

TMC 13.05.030 Director Decision Making Authority.

B. Interpretation and Application of Land Use Regulatory Code. In interpreting and applying the provisions of the Land Use Regulatory Code, the provisions shall be held to be the minimum requirements for the promotion of the public safety, health, morals or general welfare. It is not

intended by this code to interfere with or abrogate or annul any easements, covenants or agreements between parties. Where this code imposes a greater restriction upon the use of buildings or premises or upon the heights of buildings or requires larger yards or setbacks and open spaces than are required in other ordinances, codes, regulations, easements, covenants or agreements, the provisions of this code shall govern. An interpretation shall be utilized where the factual basis to make a determination is unusually complex or there is some problem with the veracity of the facts; where the applicable code provision(s) is ambiguous or its application to the facts unclear; or in those instances where a person applying for a license or permit disagrees with a staff determination made on the application. Requests for interpretation of the provisions of the Land Use Regulatory Code shall be processed in accordance with the requirements of Section 13.05.040.

(Emphasis added.) Similarly,

TMC 13.06.605 Interpretation and application.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, morals, or general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants, or agreements between parties. Where this chapter imposes a greater restriction upon the use and/or development of any buildings, land, or premises than are required in other ordinances, codes, regulations, easements, covenants, or agreements, the provisions of this chapter shall govern.

(Emphasis added.) And,

TMC 13.06.600 Zoning code administration - General purposes.

The broad purposes of the zoning provisions of the Tacoma Municipal Code are to protect and promote the public health, safety, and general welfare, and to implement the policies of the Comprehensive Plan of the City of Tacoma. More specifically, the zoning code is intended to:

- A. Provide a guide for the physical development of the City in order to:
 1. Preserve the character and quality of residential neighborhoods;
 2. Foster convenient, harmonious, and workable relationships among land uses; and
 3. Achieve the arrangement of land uses described in the Comprehensive Plan.
- B. Promote the economic stability of existing land uses that are consistent with the Comprehensive Plan and protect them from intrusions by inharmonious or harmful land uses.
- C. Promote intensification of land use at appropriate locations, consistent with the Comprehensive Plan, and ensure the provision of adequate open space for light, air, and fire safety.

D. Foster development patterns that offer alternatives to automobile use by establishing densities and intensities that help make frequent transit service feasible, and encourage walking and bicycling. This emphasis on alternative transportation will also have air quality benefits and will conserve energy.

E. Establish review procedures to ensure that new development is consistent with the provisions of this chapter and all other requirements of this code.

(Emphasis added.) More specifically, the subject neighborhood is an R-2 single family residential dwelling district. TMC **13.06.100 Residential Districts** provides, in pertinent part:

A. District purposes. The specific purposes of the Residential Districts are to:

1. Implement the goals and policies of the City's Comprehensive Plan.
2. Implement the Growth Management Act's goals and county-wide and multi-county planning policies.
3. Provide a fair and equitable distribution of a variety of housing types and living areas throughout the City's neighborhoods.
4. Protect and enhance established neighborhoods, and ensure that new development is in harmony with neighborhood scale and character.
5. Provide for predictability in expectations for development projects.
6. Allow for creative designs while ensuring desired community design objectives are met.
7. Strengthen the viability of residential areas by eliminating incompatible land uses, protecting natural physical features, promoting quality design, and encouraging repair and rehabilitation of existing residential structures.
8. Allow for the enhancement of residential neighborhoods with parks, open space, schools, religious institutions and other uses as deemed compatible with the overall residential character.

...

B. Districts established.

1. The following districts are intended primarily for residential land uses, as well as other uses such as daycares, parks, schools, churches and other uses which serve the neighborhood and have been deemed compatible with residential character.

...

3. R-2 Single-Family Dwelling District. This district is intended primarily for single-family detached housing but, in addition to the uses listed above, may also allow a limited number of compatible uses including lodging uses, holiday sales for Christmas and Halloween, and two-family dwellings in certain circumstances. The district is characterized by low residential traffic volumes and generally abuts more intense residential and commercial districts.

(Emphasis added.)

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Tacoma Municipal Code also provides a table of land use regulations for all districts. TMC 13.06.100C(4). It provides, *inter alia*, that commercial recreation and entertainment is not permitted; neither is a commercial parking facility or eating and drinking establishments. Interesting are the relatively less intensive uses that are prohibited: minor personal service uses such as beauty parlors, and three-family dwellings; neither are two-family dwellings unless in existence prior to a rezone or with a conditional use permit. This is far from a comprehensive list. However, a footnote to the table provides: "For historic structures and sites, certain uses that are otherwise prohibited may be allowed, subject to the approval of a conditional use permit. See Section 13.06.640.F for additional details, limitations and requirements." (Emphasis added.) It is on this ground that the conditional use permit issued in this case is said to be authorized.

C. Conditional Use Permit.

TMC 13.06.640 Conditional Use Permit provides, in pertinent part:

A. Purpose. In many zones there are uses that may be compatible but because of their size, operating characteristics, potential off-site impacts and/or other similar reasons warrant special review on a case-by-case basis. The purpose of the conditional use permit review process is to determine if such a use is appropriate at the proposed location and, if appropriate, to identify any additional conditions of approval necessary to mitigate potential adverse impacts and ensure compatibility between the conditional use and other existing and allowed uses in the same zoning district and in the vicinity of the subject property. The zoning district use tables identify which uses require a conditional use permit (see Sections 13.06.100, -.200, -.300, and -.400). These uses may be authorized by the Director or Hearing Examiner in accordance with the procedures established in TMC 13.05 and the applicable criteria outlined below.

(Emphasis added.)

The proponents point to the Examiner's Conclusions of Law that the conditions attached to the use of the property will limit noise, activity, and parking impacts sufficient to be compatible with the neighborhood. Conclusions of Law No. 15, Hearings Examiner Decision of February 4, 2015. AR 219. Historical use of the property during Blue Ribbon's stewardship was undoubtedly problematic; but this was discounted by the

Examiner as an artifact of a different set of rules and wedding reception contracts entered into when the City first allowed unconditional use of the property. *Id.*

The proponents of the CUP maintain that the proposed assembly use of the subject property, as conditioned by the CUP, is consistent with the provisions of Tacoma's land use regulations including its Comprehensive Plan for allowing alternative uses of historic structures.

Petitioners' response to this is to refer to the "plain language" of that provision, to-wit: former **TMC 13.06.640F**² identifies "assembly facilities" as a possible permitted use and further provides, in part as follows:

TMC 13.06.640F:

F. Uses in Historic Structures. A conditional use permit for the reuse of a historic structure and/or site for one of the below listed uses (where not otherwise allowed by the underlying zoning) [*i.e.* assembly facilities] shall be authorized only if it can be found to be consistent with all of the following criteria. This provision shall be limited to only those structures and sites that are individually-listed on the Tacoma Register of Historic Places. In granting such a conditional use permit the Director or Hearing Examiner may attach thereto such conditions regarding the location, character, orientation, layout, access and other features of the proposed development as may be deemed necessary to ensure consistency with the intent of the TMC and Comprehensive Plan and ensure that use of the building and site will be compatible with the existing, historic attributes of the building and site and surrounding uses.

1. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plans, and applicable ordinances of the City of Tacoma.
2. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a conditional use permit:
 - a. The generation of noise, noxious or offensive emissions, light, glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.
 - b. Availability of public services which may be necessary or desirable for the support of the use. These may include, but

² Tacoma Municipal Code Revised 12/2015 cites this provision as **TMC 13.06.640I**. As the pre-12/2015 version of the Code is not available to me, except for **TMC 13.06.640F**, all references herein are to the 12/2015 revisions. Counsel is expressly invited to point out to the Court any pertinent differences between this version of the Code and the prior Code applicable to this case.

shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.

- c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.
3. The proposed re-use shall promote the preservation and/or restoration of the designated historic structure(s) on the site.
4. The proposed reuse and design of any modifications to the historic structure(s) and site shall be approved by the Landmarks Preservation Commission.

(Emphasis in original.) Petitioner Friends of Historic Weyerhaeuser Mansion Opening Brief, p. 11. The Petitioners' claim the "most glaring inconsistency between this application and the Comprehensive Plan is the commercial nature of the proposal, which is contrary to the applicable Neighborhood Elements of the Comprehensive Plan." It goes on to cite a policy goal that "[e]ncroachment by commercial or other nonresidential uses shall be prohibited." (Emphasis in original.) *Id.* Petitioners argue that this prohibition ends the argument. Petitioner Friends of Historic Weyerhaeuser Mansion Amended Reply Brief, p. 5.

Protecting established neighborhoods, ensuring that new development is in harmony with neighborhood scale and character as well as eliminating incompatible land uses, is also consistent with the purposes of zoning residential districts, TMC **13.06.100 Residential Districts**, set forth above. For these reasons, Petitioners claim, the CUP should have been denied by the Director.

The proposed use is, indeed, a commercial enterprise as Petitioners insist. But was not Northwest Baptist College/Corban University likewise a commercial enterprise? Labeling the application for a CUP a "commercial" enterprise is insufficient of itself to this Court's determination. Petitioners' approach is correct, but the incantation of the word "commercial" does not conclude the issue especially given the historical use of the subject property. Moreover, by definition, the conditions of a CUP for the proposed

assembly use of the subject property, are supposed to render the use consistent with the provisions of Tacoma's land use regulations including its Comprehensive Plan.³

An assembly facility is not defined in the Code. To the extent it includes grounds or structures where groups of people gather for a common purpose whether that purpose be political, religious, educational or social, it encompasses a vast range of possible uses. Experience showed that the earlier religious and educational uses of the subject property could be accommodated without regulation. Blue Ribbon and Corban's more intense use of the property has created noise, traffic and other problems for the neighborhood than heretofore.

What is different is the dramatically changed intensity of the usage of the subject property. The question becomes whether the proposed conditions are sufficient to mitigate potential adverse impacts to ensure compatibility between the conditional use and other existing and allowed uses in the same zoning district and in the vicinity of the subject property. Ensuring such mitigation is the *raison d'être* of the CUP exercise.

The use of the property for wedding reception celebrations – parties, per the Petitioners – occurring multiple times per week by up to 150 persons playing amplified music, drinking alcohol (or smoking marihuana) to the point of intoxication for some of the patrons, often during evening hours in a residential district is a dramatically incompatible use with the existing neighborhood.

The goal of the CUP conditions is to confine these externalities to the subject property. These conditions can be generally categorized as:

- a) limiting hours of operation;
- b) controlling the number of people attending the receptions by limiting it to no more than 3 person per available on-site parking (not to exceed 150 people);
- c) restricting how/where/when amplified sound can be used;
- d) building a noise barrier; and,
- e) limiting the duration of (but not eliminating) alcohol use by patrons.

³ Granted, the language of the ordinance is somewhat circular: one can have certain uses for historical structures that would not be permitted by the zoning provided the use complies with ALL applicable ordinances which presumably would include zoning ordinances.

The proposed parking rules do immediately reduce the number of persons who had been attending weddings. Yet, the CUP recognizes the proponent anticipates expanding the parking. As a practical matter, the number of attendees would remain much the same.

The Examiner acknowledged numerous and significant problems in the neighborhood from the operations of the wedding reception facility. But even with the best effort of Blue Ribbon, they admitted their efforts to control their patrons did not always succeed.

4 Q: Then, um, with regard to this August 9th event, uh, you
5 -- I think you explained that this was a younger crowd or -
6 - and they became, sort of, rowdy and you did everything
7 you could to try and get 'em to quiet down; is that
8 correct?

9 A: Yes.

10 Q: And you couldn't; could you?

11 A: We made a noticeable difference once we noti -- once we
12 were able -- once we saw the direction the wedding was
13 heading we used all of our experience and everything we
14 could to make a -- as much of a change in the energy of the
15 wedding as possible during the event.

16 Q: And you still had a wedding that violated the
17 Conditional Use Permit and the Tacoma Noise Standard;
18 didn't you?

19 A: Yes.

Testimony of Vanessa Volkman, Owner/Director, Blue Ribbon Cooking, RP Vol. III, p. 58. This is unsurprising when you are dealing with people in a celebratory mood who have been using intoxicants. Yet the Examiner discounted the prospect that problems would recur in the neighborhood because the CUP (as amended by the Examiner)

proposes a different set of rules that include: the presence of off-duty City of Tacoma police officers for events attended by more than 30 guests and several monthly meetings to evaluate whether the permit conditions as implemented are adequately mitigating impacts on the neighborhood.

VI. Conclusion

I set out all of the conditions of the CUP in section III above because reading them one is impressed by how numerous and broad they are. One could regard this as a measure of how far the City and the Applicant went in order to assure the proposed use of the assembly facility is compatible with the neighborhood.

But is the proposed CUP a bridge too far?⁴ After all, one could also regard the number and extent of the regulations as a measure of just how incompatible the proposed use is that so much supervision is needed.

The proposed assembly use, even as conditioned by the CUP, is not in harmony with neighborhood's scale and character. The City fairly distinguishes the point, but concedes that the City "generally does not want new commercial development in this residential neighborhood." City of Tacoma's LUPA Hearing Brief at p. 8. Of course we knew that from the general zoning rules discussed above.

The Examiner noted the "City did not consider the proposed assembly facility use by Northwest Baptist as in conflict with the Comprehensive Plan provisions when viewed as a whole." Respectfully, one must disagree. When one considers the goals of the City's land use administration one fails to see how 1) the CUP fosters convenient, harmonious

⁴ The idiom "a bridge too far" owes its popularity to British Lieutenant General Frederick Browning, who was one of the key leaders in the failed allied mission known as Operation Market Garden in September 1944. In this operation, the Allies attempted to get past German lines and seize several bridges in the Netherlands, which at the time was occupied by Nazi forces. The exact number of casualties among the Allied forces is unknown, but there are believed to have been more than 15,000 dead, wounded or missing.

Browning, who is said to have been skeptical of the mission from the outset, reportedly told the mission's organizers that "I think we may be going a bridge too far" before the operation started. His words were unheeded but sum up the sentiment of the idiom as it is used today.

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and workable relationships among land uses, or, 2) achieves the arrangement of land uses described in the Comprehensive Plan. To the extent the CUP preserves a historical building it could help to preserve the character and quality of the neighborhood. But the case that such intense commercial use is necessary to achieve it is unconvincing and should not come at the non-trivial expense of the Petitioners. TMC 13.06.600

The problems that have already been experienced, the number of police calls and acrimony generated from so many people entering an otherwise quiet and remote neighborhood with the express purpose of celebrating is a measure of the difficulties to be overcome by the CUP. The primacy of protecting established neighborhoods, while ensuring that new development is in harmony with neighborhood scale and character is not satisfied by this CUP.

Most glaring is the proposed sound barrier wall, the need for which is patent but the details and effectiveness of which is speculative. More subtle but perhaps just as revealing is the condition of monthly meetings to evaluate/monitor whether the permit conditions as implemented adequately mitigate impacts on the neighborhood. This is a laudable but ultimately an inappropriate attempt to make these uses fit with each other. The need for such meetings illuminates the lack of confidence one has in the CUP. If the Examiner genuinely thought the CUP adequate, one wonders why such a condition would be thought necessary.

One concludes the CUP is too ambitious, complicated and challenging to successfully overcome the problems posed by the proposed use. As discussed above, not all assembly facilities are the same. The pre-2009 assembly use of the property was a satisfactory use of the subject property; the proposed wedding/wedding reception use is not.

The CUP is not consistent with the goals and policies of the Comprehensive Plan and applicable ordinances of the City of Tacoma because the CUP is not likely to ensure compatibility between the conditional use and the existing and allowed uses in the same

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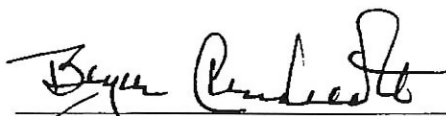
zoning district and in the vicinity of the subject property. TMC 13.06.640.⁵ Given the decision of the court, is it unnecessary to reach the other issues raised by Petitioners.

VII. Decision

The Decision of the Hearing Examiner should be reversed. The application for the Conditional Use Permit should be denied. Petitioners' counsel should prepare an appropriate form of order to memorialize this decision. The matter is scheduled May 27, 2016 at 11:00 a.m. in my courtroom, 2C, for presentation and entry of those documents.

DATED: May 2, 2016.




 Bryan Chushcoff, Judge

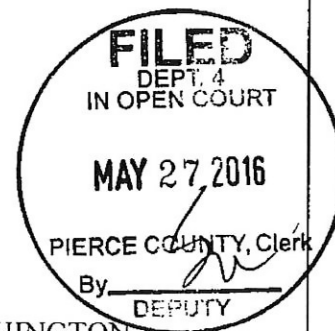
⁵ TMC 13.06.100B(5) is not applicable to the subject neighborhood but its provisions are perhaps instructive of a lighter touch in how one blends uses where residential districts encounter the unique considerations of preserving historic buildings under the Tacoma Municipal Code. It provides:

5. HMR-SRD Historic Mixed Residential Special Review District. This district is designed to apply to existing neighborhood areas or portions of existing neighborhood areas which have been designated as an historic special review district because the buildings within reflect significant aspects of Tacoma's early history, architecture, and culture as set forth and according to the procedures in Chapter 13.07, and which are characterized by a mix of residential buildings, including single family residential dwellings and multiple family dwellings, and where it is desirable to protect, preserve, and maintain the historic buildings. Single-family dwellings will continue to be the predominant land use within the HMR-SRD district. Infill development shall be consistent with historic character of the district and shall be predominantly single-family. A limited number of two- and three-family dwellings may be permitted by conditional use permit provided they are consistent with the historic character of the district and are not conversions of historically contributing single-family houses. Conversion of existing multiple-family uses to single-family uses will be encouraged, but not required.

(Emphasis added.)



15-2-07340-6 46984003 ORRR 05-31-16



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

SHAWN C. McROBERTS and SARAH J.
McALISTER, husband and wife,
And
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION, a Washington
non-profit corporation

Petitioners/Plaintiffs,

vs.

CITY OF TACOMA, a Washington municipal
corporation

Respondent/Defendant.

NORTHWEST BAPTIST SEMINARY d/b/a
CORBAN UNIVERSITY, a Washington
nonprofit corporation, and BLUE RIBBON
COOKING, LLC, a Washington limited liability
company,

Property Owner/Applicant.

NO. 15-2-07340-6

**ORDER GRANTING
RELIEF TO PETITIONERS**

(Consolidated with no. 15-2-07362-7)

I. PRIOR PROCEDURAL HISTORY

The present land use Petition and Complaint is a consolidated case involving appeals by
Petitioners Shawn C. McRoberts and Sarah J. McAlister ("McRoberts") and Friends of the
Historic Weyerhaeuser Mansion, a Washington non-profit corporation ("Friends") of the City of

1 Tacoma Hearing Examiner's Decision dated February 4, 2015, and the Hearing Examiner's
2 Order Denying Petitioner's Request for Reconsideration dated March 12, 2015 under City of
3 Tacoma file numbers HEX 2014-027, HEX 2014-029, and HEX 2014-030 (CUP 2013-
4 40000211241), hereinafter referred to as the "Decision".

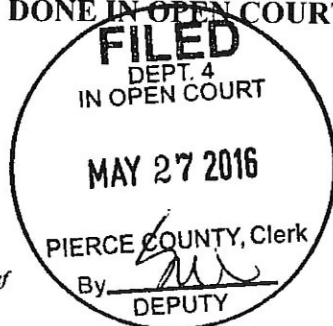
5
6 The petitioners timely filed LUPA petitions with the Pierce County Superior Court seeking
7 reversal of the Decision or alternatively remand of the Decision for modifications or further
8 review pursuant to RCW 36.70C.140. The Court reviewed the record before the Hearing
9 Examiner, conducted a hearing on the Petitions on April 6, 2016 at which all parties were present
10 and represented by their respective counsel and applying the legal standards of clearly erroneous
11 this Court issued its written decision on May 2, 2016 concluding the Decision should be reversed
12 and the Applicants' Conditional Use Permit be denied, which Decision was filed in the Court
13 record and is incorporated herein by this reference.

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17 **II. ORDER**

18 Based on the record in this case, the pleadings and arguments of the parties it is hereby
19 ORDERED THAT:

- 20
21 1. The Decision of the Hearing Examiner is reversed.
22 2. The Conditional Use Permit is denied.
23 3. The Court will entertain a motion by the Petitioners for an equitable assessment of the
24 costs for the verbatim transcript and obtaining the administrative record before the
25 Hearing Examiner pursuant to RCW 36.70C.110(4).
26

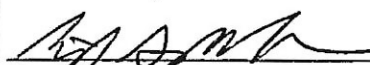
27 DONE IN OPEN COURT this 27 day of May, 2016.



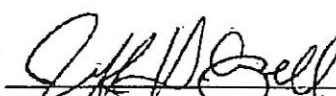
[Signature]
JUDGE/COURT COMMISSIONER

CAMPBELL, DILLE, BARNETT
& SMITH, PLLC
317 South Meridian
Puyallup, Washington 98371
(253) 848-3513
(253) 845-4941 fax


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4 **Presented by:**

5 
6 Stephen A. Burnham, WSBA #13270
7 Campbell, Dille, Barnett & Smith, PLLC
8 Attorneys for Plaintiffs

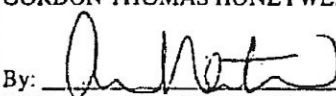
9
10 **Approved As To Form/Notice of
Presentment Waived:**

11 
12 Jeff H. Capell, WSBA #25207
13 Attorney for Respondent, City of Tacoma
14

15 **Approved As To Form/Notice of
Presentment Waived:**

16 EISENHOWER CARLSON, PLLC
17 Robert G. Casey
18 By:  WSBA #13270
19 Upon email authority May 26, 2016
20 Robert G. Casey, WSBA #14183
21 Attorneys for Petitioner Friends of
22 the Historic Weyerhaeuser Mansion

23 **Approved As To Form/Notice of
Presentment Waived:**

24 GORDON THOMAS HONEYWELL
25 By: 
26 William T. Lynn, WSBA #7887
27 Amanda McLean Nathan, WSBA #46469
28 Attorneys for Respondents Northwest Baptist
29 Seminary, Corban University and Blue Ribbon
30 Catering, LLC

APPENDIX D

Pierce County Superior Court Preliminary Injunction

Dated August 15, 2014

0147

2529

8/19/2014



14-2-10830-9 43135237 ORPLINJ 08-19-14



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

SHAWN C. McROBERTS and SARAH
J. McALISTER, husband and wife,

Plaintiffs,

vs.

NORTHWEST BAPTIST SEMINARY
dba CORBAN UNIVERSITY, a
Washington non-profit corporation, and
BLUE RIBBON COOKING, LLC, a
Washington limited liability company,

Defendants..

Case No: 14-2-10830-9

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

THIS MATTER having come regularly before the court upon defendants' Motion for Preliminary Injunction of the parties hereto, by and through their respective attorneys of record, the court having considered the pleadings, and in all things being advised, now, therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the defendants' Motion for Preliminary Injunction is hereby granted.

FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants are ordered to cease and desist from any and all use of the Defendant's property located at 4301 North Stevens Street, Tacoma, Washington 98407, for the conduct of any weddings, private parties, social events, receptions or similar events for the period of time commencing on August 18 at 12:01 a.m. and continuing through August 31 at 12:00 p.m.; PROVIDED such preliminary injunction will allow Defendants to conduct private parties, social events, weddings and receptions on the Defendant's property, so long as such events are conducted ~~indoors with exterior doors and windows closed and otherwise do~~ *in a manner that does* not violate Tacoma Municipal Code 8.12.060D and 8.30.030A and the conditions and terms of the conditional use permit issued by the city of Tacoma regarding Defendant's property and dated June 13, 2014.

FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs shall post a bond in the amount \$10,000 pursuant to RCW 7.40.080 with the clerk of this court.

DONE IN OPEN COURT this ____ day of 8-15, 2014.

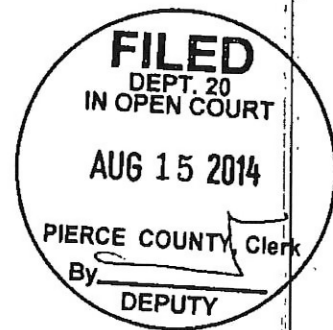
JUDGE/

Kitty-Ann van Doorninck
Kitty-Ann van Doorninck

Presented by:

Stephen A. Burnham
Stephen A. Burnham, WSBA #13270
Campbell, Dille, Barnett & Smith, PLLC
Attorneys for Plaintiffs

copy mailed
Shelly Anderson
Shelly Anderson WSBA #41155
Attorney for Defs.



APPENDIX E

Summary of Tacoma Comprehensive Plan Prohibition on Commercial Uses in Residential Zones and Neighborhood Subareas

APPENDIX E – Summary of Tacoma Comprehensive Plan Prohibition on Commercial Uses in Residential Zones and Neighborhood Subareas

Source: TMC Zoning Code TMC 13.06.100C.4; Condition Use Permit Code TMC 13.06.640; and Comprehensive Plan

Central Neighborhood Subareas:

Subarea	TMC Zoning Code Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Bryant	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Stanley	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
McCarver	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Allenmore	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Franklin	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Bellarmine	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
12 th & Proctor	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Foss	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Delong	Prohibited	Allowed	Note Prohibited	Historic Reuse Allowed

Eastside Neighborhood Subareas:

Subarea	TMC Zoning Code Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Eastside – no subareas	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed in subarea

New Tacoma Neighborhood Subareas:

Subarea	TMC Zoning Code Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
New Tacoma - no subareas	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed in all subarea neighborhoods of district

Northeast Tacoma Neighborhood Subareas:

Subarea	TMC Zoning Code Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Subarea	TMC Zoning Assembly Facilities	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Northwood	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Stonegate-Centennial	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Northeast Tacoma	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Crescent Heights	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Northshore	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Harbor Ridge	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Upper Browns Point	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Cedar Heights	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed

North End Neighborhood Subareas

Subarea	TMC Zoning Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Sherman	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Jane Clark	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Puget Park/Puget Creek	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Mason	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Washington	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Jefferson	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
UPS Area	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Old Town	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Prospect Hill	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Buckley	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Stadium-Seminary	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Saint Patrick	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Jason Lee	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed
Wedge	Prohibited	Allowed	Prohibited	Historic Reuse Not Allowed

South End Neighborhood Subareas

Subarea	TMC Zoning Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
South End – no subareas	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed in all subarea neighborhoods of district

South Tacoma

Subarea	TMC Zoning Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Arlington	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Edison-Gray	Prohibited	Allowed	Only prohibited east of Puget Sound Avenue between South 48 th Street and the City limits	Historic Reuse Allowed, except for east of Puget Sound Avenue between South 48 th Street and the City limits
Lincoln Heights	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Madison	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Manitou	Prohibited	Allowed	Only prohibited between South Tyler and Orchard Street from South 56 th to 74th	Historic Reuse Allowed, except for between South Tyler and Orchard Street from South 56 th to 74th
Oakland- Madrona	Prohibited	Allowed	Only prohibited in designated single-family detached housing areas.	Historic Reuse Allowed, except for in designated single-family detached housing areas.
Orchard	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Tacoma Mall Area	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed

West End Neighborhood Subareas:

Subarea	TMC Zoning Assembly Facilities TMC 13.06.100C.4	TMC 13.060 F	Commercial use Prohibited in Residential	Historic Reuse would be allowed in Residential
Point Defiance	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
North West Slope	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Ruston/Jane Clark Park	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Vassault Park/Truman School	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Highlands/Narrows	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Wilson School	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
West Slope	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed
Highland Hills/TCC/China Lake	Prohibited	Allowed	Not Prohibited	Historic Reuse Allowed

APPENDIX F.

Tacoma Municipal Code (TMC) 13.100C. Residential District [Zoning Code]

13.06.100 Residential Districts.

The 100 series will contain regulations for all residential classifications, including the following:

R-1	Single-Family Dwelling District
R-2	Single-Family Dwelling District
R-2SRD	Residential Special Review District
HMR-SRD	Historic Mixed Residential Special Review District
R-3	Two-Family Dwelling District
R-4	Multiple-Family Dwelling District
R-4-L	Low-Density Multiple-Family Dwelling District
R-5	Multiple-Family Dwelling District
PRD	Planned Residential Development District (see Section 13.06.140)

A. District purposes. The specific purposes of the Residential Districts are to:

1. Implement the goals and policies of the City's Comprehensive Plan.
2. Implement the Growth Management Act's goals and county-wide and multi-county planning policies.
3. Provide a fair and equitable distribution of a variety of housing types and living areas throughout the City's neighborhoods.
4. Protect and enhance established neighborhoods, and ensure that new development is in harmony with neighborhood scale and character.
5. Provide for predictability in expectations for development projects.
6. Allow for creative designs while ensuring desired community design objectives are met.
7. Strengthen the viability of residential areas by eliminating incompatible land uses, protecting natural physical features, promoting quality design, and encouraging repair and rehabilitation of existing residential structures.
8. Allow for the enhancement of residential neighborhoods with parks, open space, schools, religious institutions and other uses as deemed compatible with the overall residential character.

B. Districts established.

1. The following districts are intended primarily for residential land uses, as well as other uses such as daycares, parks, schools, churches and other uses which serve the neighborhood and have been deemed compatible with residential character.
2. R-1 Single-Family Dwelling District. This district is intended for low-density, single-family detached housing. Other compatible uses such as residential care homes and shelters are also appropriate. The district is characterized by low residential traffic volumes and properties located within the View Sensitive Overlay district. It is most appropriate in areas with steep topography or an established pattern of larger lots.
3. R-2 Single-Family Dwelling District. This district is intended primarily for single-family detached housing but, in addition to the uses listed above, may also allow a limited number of compatible uses including lodging uses, holiday sales for Christmas and Halloween, and two-family dwellings in certain circumstances. The district is characterized by low residential traffic volumes and generally abuts more intense residential and commercial districts.
4. R-2SRD Residential Special Review District. This district is intended primarily for single-family detached housing, but in addition to the uses listed above, it also may allow a limited number of two- and three-family dwellings by conditional use permit where the location, amount, and quality of such development would be compatible with the single-family character of the area.
5. HMR-SRD Historic Mixed Residential Special Review District. This district is designed to apply to existing neighborhood areas or portions of existing neighborhood areas which have been designated as an historic special review district because the buildings within reflect significant aspects of Tacoma's early history, architecture, and culture as set forth and according to the procedures in Chapter 13.07, and which are characterized by a mix of residential buildings, including single family residential dwellings and multiple family dwellings, and where it is desirable to protect, preserve, and maintain the historic buildings. Single-family dwellings will continue to be the predominant land use within the HMR-SRD district. Infill development shall be consistent with historic character of the district and shall be predominantly single-family. A limited number of two- and three-family dwellings may be permitted by conditional use permit provided they are consistent with the historic character of the district and are not conversions of historically contributing single-family houses. Conversion of existing multiple-family uses to single-family uses will be encouraged, but not required.
6. R-3 Two-Family Dwelling District. This district is intended primarily for two-family housing development. Uses such as single-family dwellings, three-family dwellings, and some lodging and boarding homes may also be appropriate, in addition to

Tacoma Municipal Code

the uses permitted in less dense zones. The district is characterized by low residential traffic volumes and generally abuts more intense residential and commercial districts.

7. R-4-L Low-Density Multiple-Family Dwelling District. This district is intended primarily for low-density multiple-family housing, mobile home parks, retirement homes and group living facilities. It is similar to the R-4 Multiple-Family Dwelling District, but more restrictive site development standards are intended to minimize adverse impacts of permitted and conditional uses on adjoining land. The district is characterized by amenities and services associated with single- and two-family residential districts, and it is located generally along major transportation corridors and between higher and lower intensity uses.

8. R-4 Multiple-Family Dwelling District. This district is intended primarily for medium density multiple-family housing. In addition to uses permitted in less dense zones, other appropriate uses may include day care centers, and certain types of special needs housing. The district is characterized by a more active living environment and is located generally along major transportation corridors and between higher and lower intensity uses.

9. R-5 Multiple-Family Dwelling District. This district is intended for high-density multiple family housing, as well as residential hotels, retirement homes, and limited mixed-use buildings, in addition to uses permitted in less dense zones. The district is generally located in the center of the city in close proximity to employment centers, conveniences, services, major transportation corridors, and public transportation facilities.

C. Land use requirements.

1. Applicability. The following tables compose the land use regulations for all districts of Section 13.06.100. All portions of 13.06.100 and applicable portions of 13.06.500 apply to all new development of any land use variety, including additions, and remodels, in all districts in Section 13.06.100, unless explicit exceptions or modifications are noted. The requirements of Section 13.06.100.A through Section 13.06.100.C are not eligible for variances. When portions of this section are in conflict with other portions of Chapter 13.06, the more restrictive shall apply. For individually designated properties listed on the Tacoma Register of Historic Places, and for contributing buildings within Historic Special Review Districts, where there is a conflict between the regulations of this chapter and historic guidelines and standards, the historic guidelines and standards shall prevail pursuant to TMC 13.05.046.

2. Pedestrian streets designated. Figure 7 of the Comprehensive Plan designates Corridors that are considered key streets for integrating land use and transportation and achieving the goals of the Urban Form and Design and Development Elements. These Corridors are herein referred to as "Pedestrian Streets." The designation entails modified design requirements to improve building orientation, definition of the public realm, and pedestrian connectivity.

3. Use requirements. The following use table designates all permitted, limited, and prohibited uses in the districts listed. Use classifications not listed in this section or provided for in Section 13.06.500 are prohibited, unless permitted via Section 13.05.030.E.

4. Use table abbreviations.

P = Permitted use in this district.
TU = Temporary Uses allowed in this district subject to specified provisions and consistent with the criteria and procedures of Section 13.06.635.
CU = Conditional use in this district. Requires conditional use permit, consistent with the criteria and procedures of Section 13.06.640.
N = Prohibited use in this district.

5. District use table. (see next page for table)

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Accessory uses and buildings	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.100.F
Adult family home	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.535
Adult retail and entertainment	N	N	N	N	N	N	N	N	
Agricultural uses	CU	CU	CU	CU	CU	CU	CU	CU	Such uses shall not be located on a parcel of land containing less than 20,000 square feet of area. Buildings shall not be permitted in connection with such use, except greenhouses having total floor area not in excess of 600 square feet. Livestock is not allowed.
Airports	CU	CU	CU	CU	CU	CU	CU	CU	
Ambulance services	N	N	N	N	N	N	N	N	
Animal sales and service	N	N	N	N	N	N	N	N	
Assembly facility	N	N	N	N	N	CU	CU	CU	
Brewpub	N	N	N	N	N	N	N	N	
Building materials and services	N	N	N	N	N	N	N	N	
Business support services	N	N	N	N	N	N	N	N	
Carnival	N	N	N	N	N	N	N	N	Subject to additional requirements contained in Section 13.06.635.
Cemetery/interment services	N/CU	N/CU	N/CU	N/CU	N/CU	N/CU	N/CU	N/CU	New facilities are not permitted. Enlargement of facilities in existence prior to the effective date of this provision (May 27, 1975) may be approved in any zoning district subject to a conditional use permit. See Section 13.06.640.
Commercial parking facility	N	N	N	N	N	N	N	N	Subject to additional requirements contained in Section 13.06.510.
Commercial recreation and entertainment	N	N	N	N	N	N	N	N	
Communication facility	CU	CU	CU	CU	CU	CU	CU	CU	Antennas for such facilities are subject to the additional requirements contained in Section 13.06.545.
Confidential Shelter	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Continuing care retirement community	N	N	N	N	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.
Correctional facility	N	N	N	N	N	CU	CU	CU	Side yards shall be provided as specified in Section 13.06.602.
Craft Production	N	N	N	N	N	N	N	N	Prohibited except as provided for in Section 13.06.100.E
Cultural institution	N	N	N	N	N	N	N	N	
Day care, family	P	P	P	P	P	P	P	P	Must be licensed by the State of Washington.
Day care center	CU	CU	CU	CU	CU	P/CU	P	P	Subject to additional requirements contained in Section 13.06.155. For R-4L, day care centers with an enrollment limited to 50 or fewer children or adults are permitted, while day care centers for more than 50 children or adults may be allowed subject to the approval of a conditional use permit.
Detoxification center	CU	CU	CU	CU	CU	CU	CU	CU	
Drive-through with any use	N	N	N	N	N	N	N	N	
Dwelling, single-family detached	P	P	P	P	P	P	P	P	No lot shall contain more than one-dwelling unless each dwelling complies with the use regulations, height regulations, area regulations, and parking regulations of the district.
Dwelling, two-family	N	N	P/CU	P/CU	P	P	P	P	In the R-2SRD and HMR-SRD districts, two-family dwellings are permitted if lawfully in existence at the time of reclassification to R-2SRD/HMR-SRD or only upon issuance of a conditional use permit. See Section 13.06.640. Subject to additional requirements contained in Section 13.06.501.N.

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Dwelling, three-family	N	N	P/CU	P/CU	P	P	P	P	In the R-2SRD and HMR-SRD districts, three-family dwellings are permitted if lawfully in existence at the time of reclassification to R-2SRD or HMR-SRD. New three-family dwellings are permitted only upon issuance of a conditional use permit. See Section 13.06.640. For R-3, three-family dwellings are permitted, provided existing single- or two-family dwellings shall not be enlarged, altered, extended, or occupied as a three-family dwelling, unless the entire building is made to comply with all zoning standards applicable to new buildings; and, further provided such existing structures shall not be enlarged or extended, unless such enlargement, extension, or alteration is made to conform to the height, area, and parking regulations of this district. Subject to additional requirements contained in Section 13.06.501.N.
Dwelling, multiple-family	N	N	N	P/N	N	P	P	P	In the HMR-SRD district, only multiple-family dwellings lawfully in existence on December 31, 2005 are permitted. Such multiple-family dwellings may continue and may be changed, repaired, and replaced, or otherwise modified, provided, however, that the use may not be expanded beyond property boundaries owned, leased, or operated as a multiple-family dwelling on December 31, 2005.
Dwelling, townhouse	N	N	CU	N	P	P	P	P	Subject to additional requirements contained in Section 13.06.100.G.
Dwelling, accessory (ADU)	P/N	P/N	P/N	P/N	P	P	P	P	In the R-1, R-2, R-2SRD and HMR-SRD districts, detached ADUs are prohibited while attached ADUs are permitted. Subject to additional requirements contained in 13.06.150.
Eating and drinking	N	N	N	N	N	N	N	P	For R-5, minor eating and drinking establishments are permitted, provided they are within retirement homes, continuing care retirement communities, student housing, apartment complexes, or similar facilities, are designed primarily to serve on-site residents, and are consistent with a restaurant use per Section 13.06.700.E.
Emergency and transitional housing	N	N	N	N	N	CU	CU	CU	Subject to additional requirements contained in Section 13.06.535.

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Extended care facility	N	N	N	N	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.
Foster home	P	P	P	P	P	P	P	P	
Fueling station	N	N	N	N	N	N	N	N	
Funeral home	N	N	N	N	N	N	N	N	
Golf course	P	P	P	P	P	P	P	P	
Group housing	P	P	P	P	P	P	P	P	In the R-1, R-2, R-2SRD, and HMR-SRD districts, group housing is limited to 6 or fewer unrelated adults. In the R-3 district, group housing is limited to 15 or fewer unrelated adults. In the R-4L, R-4 and R-5 districts, there is no limit to the allowed number residents in a group housing facility.
Heliport	CU	CU	CU	CU	CU	CU	CU	CU	
Home occupation	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.100.E.
Hospital	N	N	N	N	N	CU	CU	CU	
Hotel/motel	N	N	N	N	N	N	N	N	
Industry, heavy	N	N	N	N	N	N	N	N	
Industry, light	N	N	N	N	N	N	N	N	
Intermediate care facility	N	N	N	N	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.
Juvenile community facility	CU	CU	CU	CU	CU	CU	CU	CU	Subject to additional requirements contained in Section 13.06.530.

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Lodging house	N	P	P	P	P	P	P/CU	P/CU	For R-2, R-2SRD, and HMR-SRD lodging is limited to one guest room only, provided such use shall not be in connection with a foster home for children or foster home for adults which may otherwise be authorized. For R-3 and R-4-L, lodging is limited to two guest rooms, provided such use shall not be in connection with a foster home for children, a foster home for adults, or lodging which may otherwise be authorized. For R-4 and R-5, lodging is limited to two guest rooms, provided that lodging with for more than two guest rooms may be allowed subject to the approval of a conditional use permit.
Marijuana processor	N	N	N	N	N	N	N	N	
Marijuana producer	N	N	N	N	N	N	N	N	
Marijuana retailer	N	N	N	N	N	N	N	N	
Master plans for any conditional use	CU	CU	CU	CU	CU	CU	CU	CU	The purpose of this process is to allow an applicant to seek approval for a development program which occupies a large site with multiple-buildings, a complex program, and a detailed plan developed by the applicant which would be implemented in phases and which would extend beyond the normal expiration date, to be reviewed after a ten-year period for those portions of the plan which have not yet been developed.
Microbrewery/winery	N	N	N	N	N	N	N	N	
Mobile home/trailer court	N	N	N	N	N	CU	N	N	Subject to additional requirements contained in Section 13.06.502
Nursery	N	N	N	N	N	N	N	N	
Office	N	N	N	N	N	N	N	N	

Tacoma Municipal Code

Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Parks, recreation and open space	P/CU	P/CU	P/CU	P/CU	P/CU	P/CU	P/CU	P/CU	Parks, recreation and open space uses are permitted outright. However, the following parks and recreation features and facilities require a Conditional Use Permit: <ul style="list-style-type: none"> • Destination facilities • High-intensity recreation facilities • High-intensity lighting • Development of more than 20 off-street parking spaces Parks, recreation and open space uses are subject to the requirements of Section 13.06.560, where the above features are defined.
Passenger terminal	N	N	N	N	N	N	N	N	
Personal services	N	N	N	N	N	N	N	P	For R-5, minor personal service uses, such as beauty parlors and instructional services, are permitted, provided they are within retirement homes, continuing care retirement communities, student housing, apartment complexes, or similar facilities and are designed primarily to serve on-site residents.
Port, terminal, and industrial; water-dependent or water-related (as defined in Chapter 13.10)	N	N	N	N	N	N	N	N	
Public safety and public service facilities	CU	CU	CU	CU	CU	CU	CU	CU	Unless the specific use is otherwise allowed outright, public service facilities are permitted only upon issuance of a conditional use permit. See Section 13.06.640.
Religious assembly	CU	CU	CU	CU	CU	CU	CU	CU	
Repair services	N	N	N	N	N	N	N	N	
Research and development industry	N	N	N	N	N	N	N	N	
Residential care facility for youth	N	N	N	N	P	P	P	P	Subject to additional requirements contained in 13.06.535.
Residential chemical dependency facility	N	N	N	N	N	P	P	P	Subject to additional requirements contained in 13.06.535.

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Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Retail	N	N	N	N	N	N	N	P	For R-5, minor retail businesses such as drug stores and newsstands are permitted, provided they are within retirement homes, continuing care retirement communities, student housing, apartment complexes, or similar facilities and are designed primarily to serve on-site residents.
Retirement home	N	N	N	N	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.
School, public or private	CU	CU	CU	CU	CU	CU	CU	CU	
Seasonal sales	TU	TU	TU	TU	TU	TU	TU	TU	Subject to additional requirements contained in Section 13.06.635.
Self-storage	N	N	N	N	N	N	N	N	
Staffed residential home	P	P	P	P	P	P	P	P	Subject to additional requirements contained in Section 13.06.535.
Student housing	CU	CU	CU	CU	CU	CU	CU	CU	
Surface mining	CU	CU	CU	CU	CU	CU	CU	CU	Subject to additional requirements contained in Section 13.06.540.
Temporary uses	TU	TU	TU	TU	TU	TU	TU	TU	See Section 13.06.635
Theater	N	N	N	N	N	N	N	N	
Transportation/freight terminal	N	N	N	N	N	N	N	N	
Urban Horticulture	N	N	N	N	N	N	N	N	
Utilities	CU	CU	CU	CU	CU	CU	CU	CU	
Vehicle rental and sales	N	N	N	N	N	N	N	N	
Vehicle service and repair	N	N	N	N	N	N	N	N	
Vehicle service and repair, industrial	N	N	N	N	N	N	N	N	
Vehicle storage	N	N	N	N	N	N	N	N	
Warehouse, storage	N	N	N	N	N	N	N	N	
Wholesale or distribution	N	N	N	N	N	N	N	N	

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Uses	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5	Additional Regulations ¹
Wireless communication facility	CU	CU	CU	N	CU	CU	CU	CU	Subject to additional requirements contained in Section 13.06.545 and the time limitations set forth in Chapter 13.05, Table G.
Work release center	N	N	N	N	N	N	N	N	Subject to additional requirements contained in Section 13.06.550.
Uses not prohibited by City Charter and not prohibited herein	N	N	N	N	N	N	N	N	

Footnotes:

¹ For historic structures and sites, certain uses that are otherwise prohibited may be allowed, subject to the approval of a conditional use permit. See Section 13.06.640.F for additional details, limitations and requirements.

D. Lot size and building envelope standards.

	R-1	R-2	R-2SRD	HMR-SRD	R-3	R-4-L	R-4	R-5
Minimum Lot Area (in square feet, unless otherwise noted)								
Single-family detached dwellings – Standard Lots	7,500	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Single-family detached dwellings – Small Lots	6,750	4,500	4,500	4,500	3,500	3,000	2,500	2,500
Two-family dwellings			6,000	6,000	6,000	4,250	3,750	3,500
Three-family dwellings			9,000	9,000	9,000	5,500	5,000	4,500
Multiple-family dwellings						6,000 sq. ft. plus 1,500 sq. ft. for each unit in excess of four	6,000	6,000
Townhouse dwellings	-	-	3,000	-	3,000	1,500	1,000	1,000
Mobile home/trailer court						3.5 acres, provided at least 3,500 sq. ft. is provided for each mobile home		

APPENDIX G.

Tacoma Municipal Code (TMC) 13.640A-F. Residential District [Zoning Code]

- (iii) Contain a controlled access plan for residents; and
- (iv) Contain a fire suppression and emergency access plan.

(17) Parking standards.

- (a) Parking spaces, layouts, and configuration shall be designed in accordance with TMC 13.06.510.
- (b) A minimum of two off-street parking spaces per 25 residents are required for all temporary homeless camps.
- (c) Any required parking for the principal/existing use on-site shall not be displaced as a result of the temporary homeless camp.

(18) Refuse and recycling containers shall be provided on-site, with service provided by Solid Waste Management and paid for by the applicant.

(Ord. 28216 Ex. C; passed Apr. 22, 2014; Ord. 28109 Ex. O; passed Dec. 4, 2012; Ord. 27893 Ex. A; passed Jun. 15, 2010; Ord. 27079 § 48; passed Apr. 29, 2003; Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.640 Conditional use permit.

A. Purpose. In many zones there are uses that may be compatible but because of their size, operating characteristics, potential off-site impacts and/or other similar reasons warrant special review on a case-by-case basis. The purpose of the conditional use permit review process is to determine if such a use is appropriate at the proposed location and, if appropriate, to identify any additional conditions of approval necessary to mitigate potential adverse impacts and ensure compatibility between the conditional use and other existing and allowed uses in the same zoning district and in the vicinity of the subject property. The zoning district use tables identify which uses require a conditional use permit (see Sections 13.06.100, -.200, -.300, and -.400). These uses may be authorized by the Director or Hearing Examiner in accordance with the procedures established in TMC 13.05 and the applicable criteria outlined below.

B. Conditional uses and height. Since certain conditional uses have intrinsic characteristics related to the function or operation of such uses, which may necessitate buildings or other structures associated with such uses to exceed the height limits of the zoning districts in which the conditional uses may be located, the Director or Hearing Examiner may authorize the height of buildings or other structures associated with the following conditional uses to exceed the height limit set forth in the zoning district in which such uses are located; provided, such height is consistent with the criteria contained in subsection C of this section:

1. Airports.
2. Religious assembly.
3. Schools, public or private.
4. Public safety and public services facilities.
5. Hospitals.
6. Wireless communication towers or wireless facilities, subject to the requirements set forth in Section 13.06.545, and the time limitations set forth in Chapter 13.05, Table G.
7. Utilities.
8. Park and recreation.
9. Surface Mining, and subject to the requirements of Section 13.06.540.

In order to ensure that the location and character of these uses will be compatible with the Comprehensive Plan, a review and decision by the Director or Hearing Examiner are required prior to the issuance of any conditional use permit.

C. Criteria. A conditional use permit shall be subject to the following criteria:

1. There shall be a demonstrated need for the use within the community at large which shall not be contrary to the public interest.
2. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plan, and applicable ordinances of the City of Tacoma.
3. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a conditional property use:

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- a. The generation of noise, noxious or offensive emissions, light, glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.
- b. Availability of public services which may be necessary or desirable for the support of the use. These may include, but shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.
- c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.
4. An application for a conditional use permit shall be processed in accordance with the provisions of Chapter 13.05.
- D. Special needs housing. A conditional use permit for a special needs housing facility shall only be approved upon a finding that such facility is consistent with all of the following criteria:
 1. There is a demonstrated need for the use due to changing demographics, local demand for services which exceeds existing facility capacity, gaps in the continuum of service, or an increasing generation of need from within the community.
 2. The proposed use is consistent with the goals and policies of the City of Tacoma Comprehensive Plan, any adopted neighborhood or community plan, and the City of Tacoma Consolidated Plan for Housing and Community Development.
 3. The proposed location is or will be sufficiently served by public services which may be necessary or desirable for the support and operation of the use. These may include, but shall not be limited to, availability of utilities, access, transportation systems, education, police and fire facilities, and social and health services.
 4. The use shall be located, planned, and developed such that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing in the facility or residing or working in the surrounding community. The following shall be considered in making a decision:
 - a. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety and the ability of the proponent to mitigate any potential impacts.
 - b. The provision of adequate off-street parking, on-site circulation, and site access.
 - c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties, to include the following development criteria:
 - (1) All program activities must take place within the facility or in an appropriately designed private yard space.
 - (2) Adequate outdoor/recreation space must be provided for resident use.
 - d. Compatibility of the proposed structure and improvements with surrounding properties, including the size, height, location, setback, and arrangements of all proposed buildings, facilities, and signage, especially as they relate to less intensive, residential land uses.
 - e. The generation of noise, noxious, or offensive emissions, light, glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.
 - f. Demonstration of the owner's capacity to own, operate, and manage the proposed facility, to include the following:
 - (1) Provision of an operation plan which will provide for sufficient staffing, training, and program design to meet the program's mission and goals.
 - (2) Provision of a maintenance plan which will provide for the exterior of the building and site to be maintained at a level that will not detract from the character of the surrounding area, including adequate provision for litter control and solid waste disposal.
 - (3) Demonstration of knowledge of the City's Public Nuisance Code, TMC 8.30, and plans to educate the facility staff in the provisions of the nuisance code.
 - (4) Participation in the City's Multi-Family Crime-Free Housing program by both the property owner and by on-site staff.
 - (5) Provision of a point of contact for the facility to both the Neighborhood Council and the City.
 - (6) Written procedures for addressing grievances from the neighborhood, City, and facility residents.

An application for a conditional use permit for a special needs housing facility shall be processed in accordance with the provisions of Chapter 13.05 and Section 13.06.535. The Director may, when appropriate, utilize other staff or outside parties in the review of such applications.

E. Two- and three-family and townhouse dwellings, where allowed by conditional use permit in Special Review Districts (R-2SRD and HMR-SRD). A conditional use permit for a two- or three- family or townhouse dwelling unit in a Special Review District shall only be approved upon a finding that such use is consistent with all of the following criteria:

a. The use is consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plans, and applicable ordinances of the City of Tacoma.

b. The use is consistent with the intent and regulations of the R-2SRD and HMR-SRD Districts.

c. Special circumstances exist on the site which make development or continuation of a single-family dwelling difficult. Special circumstances may include, but shall not be limited to, the following:

(1) Location on an arterial street;

(2) Location in close proximity to a more intensive zoning district;

(3) Unusually large lot for a single-family dwelling which, because of its shape, topography, lack of suitable access or other factors affecting the lot, could not be subdivided and developed in conformance with the regulations of the district; and

(4) The existence on the site of a single-family dwelling with an above-grade floor area of more than 2,400 square feet, exclusive of garage area, in the case of an application for conversion to a two-family dwelling, or 3,200 square feet in the case of a conversion to a three-family dwelling.

d. The proposed use and development shall be compatible with the quality and character of surrounding residential development and shall not be materially detrimental to the overall single-family dwelling environment and character of the general area, and in the case of conversion of an existing single-family dwelling to a two- or three-family dwelling, the existing architectural features shall be maintained to the extent practicable.

Applications for two- and three-family and townhouse dwelling units in special review districts shall be processed in accordance with the provisions of Chapter 13.05. In addition to those requirements, the applicant shall submit, in conjunction with the application, site plan drawings and drawings of building elevations, information on building materials, a landscape plan, and complete information indicating why the property is inappropriate for single-family development. The purpose of these plans and information shall be to show consistency with the required criteria.

F. Uses in Historic Structures. A conditional use permit for the reuse of a historic structure and/or site for one of the below-listed uses (where not otherwise allowed by the underlying zoning) shall be authorized only if it can be found to be consistent with all of the following criteria. This provision shall be limited to only those structures and sites that are individually-listed on the Tacoma Register of Historic Places. In granting such a conditional use permit the Director or Hearing Examiner may attach thereto such conditions regarding the location, character, orientation, layout, access and other features of the proposed development as may be deemed necessary to ensure consistency with the intent of the TMC and Comprehensive Plan and ensure that use of the building and site will be compatible with the existing, historic attributes of the building and site and surrounding uses.

1. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plans, and applicable ordinances of the City of Tacoma.

2. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a conditional use permit:

a. The generation of noise, noxious or offensive emissions, light, glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.

b. Availability of public services which may be necessary or desirable for the support of the use. These may include, but shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.

c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.

3. The proposed re-use shall promote the preservation and/or restoration of the designated historic structure(s) on the site.

4. The proposed reuse and design of any modifications to the historic structure(s) and site shall be approved by the Landmarks Preservation Commission.

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5. The proposed use shall be limited to one of the following:

Art/craft production	Assembly facilities	Continuing care retirement community
Cultural institutions	Extended care facility	Group housing
Intermediate care facility	Lodging house	Multi-family dwellings
Offices offering professional dental, medical, legal or design services	Offices for charitable, philanthropic or community service organizations where it can be shown that there is limited contact with the general public	Personal services
Retirement home	Retail, only as an incidental use to one or more of the other listed uses	

G. Uses in the South Tacoma M/IC Overlay District. When required, a conditional use permit for a use within the ST-M/IC South Tacoma Manufacturing/Industrial Overlay Zoning District, shall be authorized only if it can be found to be consistent with all of the following criteria:

1. There shall be a demonstrated need for the use within the community at large which shall not be contrary to the public interest.
2. The use shall be consistent with the goals and policies of the Comprehensive Plan, any adopted neighborhood or community plan, and applicable ordinances of the City of Tacoma.
3. The use shall be located, planned, and developed in such a manner that it is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The following shall be considered in making a decision on a conditional property use:
 - a. The generation of noise, noxious or offensive emissions, light, glare, traffic, or other nuisances which may be injurious or to the detriment of a significant portion of the community.
 - b. Availability of public services which may be necessary or desirable for the support of the use. These may include, but shall not be limited to, availability of utilities, transportation systems (including vehicular, pedestrian, and public transportation systems), education, police and fire facilities, and social and health services.
 - c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the use upon neighboring properties.
4. Freight movement will not be negatively impacted by the proposed use and related traffic generation.
5. The proposed use is not located adjacent to or within 500 feet of a primary rail or truck access for an industrial or manufacturing use.
6. The proposed use is not likely to negatively impact adjacent industrial and manufacturing uses or displace an existing industrial or manufacturing user.

An application for a conditional use permit shall be processed in accordance with the provisions of Chapter 13.05.

H. Duplex, Triplex and Townhouse Development in NRX Districts. In addition to the standard decision criteria for conditional use permits, as outlined above under subsection C, a conditional use permit for a duplex, triplex or townhouse in the NRX District shall only be approved upon a finding that such development is consistent with all of the following additional criteria:

1. The intent and regulations of the NRX district.
2. The proposed use and development shall be compatible with the quality and character of surrounding residential development, shall be designed in a manner consistent with existing neighboring structures, and shall not be materially detrimental to the overall residential environment and character of the general area. In the case of conversion of an existing single-family dwelling to a two- or three-family dwelling, the existing architectural features shall be maintained to the maximum extent practicable.

An application for a conditional use permit shall be processed in accordance with the provisions of Chapter 13.05.

I. Pre-existing uses which were not required to obtain a Conditional Use Permit at the time they were developed, but which have subsequently become Conditional Uses, shall be viewed for zoning purposes in the same manner as if they had an approved Conditional Use Permit authorizing the extent of development as of August 1, 2011. If proposed modifications or expansions to such uses exceed the Major Modification thresholds of Section 13.05.080, or for park and recreation facilities

APPENDIX H.

Tacoma Municipal Code (TMC) 13.06.700 Definitions and Illustrations

Tacoma Municipal Code

2. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.
3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.
4. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner's hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.
5. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

C. Amendment of boundaries of districts.

1. Whenever this chapter has been, or is hereafter, amended to include in a different district, property formerly included within classified district boundaries of another district, such property shall be deemed to thereupon be deleted from such former district boundaries.
2. Right-of-way, which has had prior approval for vacation pursuant to Chapter 9.22 or which is hereafter approved for vacation, shall be deemed to be added to the district boundaries of the property which the vacated right-of-way abuts. In instances where a vacated right-of-way is bordered on one side by a district which is different from the district on the other side, the right-of-way shall be deemed to be added apportionately to the respective districts.
- D. Limitation on rezones in downtown districts. After the area-wide reclassification establishing the downtown district boundaries has occurred, no property shall be reclassified to a downtown district, except through a subsequent area-wide reclassification.

E. Limitations on rezones in Mixed-Use Centers. After adoption of the area-wide reclassifications establishing and confirming the Mixed-Use Center zoning district boundaries in 2009, no property shall be reclassified to or from a Mixed-Use Center zoning district (X-district) except through a subsequent area-wide reclassification.

F. Limitations on rezones in certain overlay zoning districts. The boundaries of the following area-wide zoning overlay districts can only be amended through another area-wide reclassification: view-sensitive, groundwater protection, manufacturing/industrial center, and historic and conservation overlay districts.

G. Area-wide reclassifications adopted by the City Council supersede any previous reclassifications and any conditions of approval associated with such previous reclassifications.

(Ord. 28109 Ex. O; passed Dec. 4, 2012; Ord. 27995 Ex. D; passed Jun. 14, 2011; Ord. 27893 Ex. A; passed Jun. 15, 2010; Ord. 27818 Ex. A; passed Jul. 28, 2009; Ord. 27079 § 51; passed Apr. 29, 2003; Ord. 26947 § 54; passed Apr. 23, 2002; Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.655 Amendments to the zoning regulations.

The Planning Commission may, from time to time, recommend to the City Council amendments or supplements to the zoning regulations in order to implement the goals and policies of the Comprehensive Plan. Procedures for amendments or supplements to the zoning regulations shall be the same as those specified for development regulations in Chapter 13.02, and, more specifically, in Section 13.02.045, for Plan adoption, amendment, and implementation.

(Ord. 27079 § 52; passed Apr. 29, 2003; Ord. 26933 § 1; passed Mar. 5, 2002)

13.06.700 Definitions and illustrations.

For the purposes of this chapter, certain words and terms are defined as follows: words used in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. For words that are not defined in this chapter, or that do not incorporate a definition by reference, refer to a Webster's Dictionary published within the last ten years.

13.06.700.A

Abandonment of wireless facility. The termination or shutting-off of electrical power to a wireless communication tower and/or associated antenna and equipment facility for a period of one calendar year or more. The records of the City of Tacoma, Department of Public Utilities, shall be utilized to determine the date of power termination.

Accessory antenna device. An antenna including, but not limited to, test, mobile, and global positioning (GPS) antennas which are less than 12 inches in height or width, excluding the support structure.

Accessory building. An accessory building, structure, or portion thereof which is subordinate to and the use of which is incidental to that of the main building, structure, or use, and which is not considered as a main building or a building used for dwelling purposes. If an accessory building is attached to the main building by a substantial connection or is within six feet of the main building, such accessory building shall be considered as a part of the main building;

Accessory dwelling unit. A second subordinate dwelling unit located on the same lot as a single-family dwelling (hereinafter referred to as the "main dwelling") and either within the same building as the main dwelling or in a detached building, with a provision for independent cooking, living, sanitation, and sleeping.

Accessory use. A use that occupies less than 50 percent of the building or site square footage, is incidental to the main building or principal use, and is located on the same lot as the principal use. In no case shall such accessory use dominate in area, extent, or purpose the principal lawful use or building;

Adult family home. Family abode, licensed by the state of a person or persons who are providing assistance with Activities of Daily Living such as bathing, toileting, dressing, personal hygiene, mobility, transferring, and eating, as well as room and board to more than one but not more than six adults, 18 years or older, with functional disabilities who are not related by blood or marriage to the person or persons providing the service.

Adult retail and entertainment. See Section 13.06.525.

Agricultural use. The use of land for tree farming or growing or producing field crops, livestock, or livestock products for the production of income, together with incidental retail sales by the producer of products raised on the farm. Field crops include, among others, barley, soy beans, corn, hay, oats, and potatoes. Livestock includes, among others, dairy and beef cattle, goats, sheep, hogs, poultry and game birds. Livestock products include, among others, milk, butter, cheese, eggs and meat.

Airport. Facilities for the takeoff and landing of aircraft, including runways, aircraft storage, hangers, air traffic control facilities, terminal buildings, and customary accessory facilities and uses, such as cargo and freight transfer, aircraft maintenance, aviation fueling, aviation instruction, and eating and drinking.

Alley. A public or private accessway which provides a secondary means of vehicular access to abutting property, unless determined by the Director or Hearing Examiner to be an Officially Approved Accessway as provided under Section 13.04.140.B.

Alter. To make any change, addition, or modification in construction or occupancy of a building structure.

Alteration. A physical change to a structure or a site. Alterations do not include normal maintenance and repair or any of the following:

1. Changes to the façade of a building;
2. Changes to the interior of a building;
3. Increases or decreases in floor area of a building;
4. Changes to other structures, including parking garages, on the site or the development of new structures;
5. Changes to landscaping, off-street parking spaces, and other improvements to a site; and/or
6. Demolition

Alteration, substantial. As used in Chapter 13.06A – Downtown Tacoma, alterations within a two-year period:

1. The total cost of which, excluding purchase costs of the property and/or building, exceeds 50 percent of the replacement value of a building or structure;
2. The total cost of which, excluding purchase costs of the property, exceeds 50 percent of the replacement value of site improvements;
3. Which increase the gross square footage by more than 50 percent of buildings and structures; or
4. Which increase the gross square footage by more than 50 percent of a surface parking lot.

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Ambulance services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles.

Anchor tenant. Tenant or owner occupying not less than 100,000 square feet of building area.

Animal boarding. Provision of shelter and care for small animals on a commercial basis and large animals on a noncommercial basis. Such boarding shall include daytime and overnight stays. This classification includes activities such as feeding, exercising, grooming, and incidental medical care. This classification includes animal daycare.

Animal clinics. Facilities which provide grooming, training, or other services to animals, including medical and surgical treatment on an inpatient and/or outpatient basis.

Animal grooming. Provision of bathing and trimming services for small animals on a commercial basis.

Animal husbandry. A branch of agriculture concerned with the production and care of domestic animals.

Animal sales and service. Animal care or sales conducted primarily within an enclosed building, including animal clinics, kennels, animal grooming, animal boarding (including daycare), and retail sales. Does not include activities such as animal husbandry or stables.

Antenna. Any system of poles, panels, rods, reflecting discs, or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

1. Directional antenna (also known as "panel" antenna). An antenna which transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

2. Omni-directional antenna (also known as a "whip" antenna). An antenna that transmits and receives radio frequency signals in a 360 degree radial pattern.

3. Parabolic antenna (also known as a dish antenna). An antenna that is a bowl-shaped device for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

4. Concealed antenna. An antenna and associated equipment enclosure, installed inside a non-antenna structure or camouflaged to appear as a non-antenna structure.

Antenna height. The vertical distance measured from the base of the antenna support structure at a grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances, and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Antenna support structure. Any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

Arborist: An individual engaged in the profession of arboriculture who, through experience, education and related training, possesses the competence to provide for or supervise the management of trees and other woody plants and is certified and in good standing with the International Society of Arboriculture (ISA), or equivalent agency.

Arcade. A continuous unoccupied covered area, having direct access from abutting streets or open areas, unobstructed to a height of not less than 12 feet except for supporting beams and columns, and accessible to the general public at all times.

Art gallery. A space with public access from the sidewalk in the space and which is located within a building for the interior exhibition or display of artworks which may or may not be offered for sale to the public.

Assembly facilities. Privately operated facilities for the principle purpose of public meetings and social gatherings (including incidental recreation), including community halls, union halls, exhibition halls, social clubs, and youth centers. This use shall not include stadiums or public or quasi-public parks, recreation or open space uses.

Assisted living facility. See "intermediate care facility."

Automobile house trailers. Any structure used for human habitation constructed on wheels and capable of being moved from place to place, either under its own power or under tow.

13.06.700.B

Basement. A story partly underground. A basement shall be counted as a story in building height measurement where more than one-half of its height is above the average level of the adjoining ground.

Bicycle parking. Stationary rack that accommodates a lock securing the frame and wheels, or a lockable enclosure with the quantity accommodated determined by manufacturer's specifications.

Bicycle parking, short-term: parking meant to accommodate visitors, customers, messengers and others expected to depart within two hours; requires approved standard rack and appropriate location and placement.

Bicycle parking, long-term: parking meant to accommodate employees, students, residents, commuters, and others expected to park more than two hours. This parking is to be provided in a secure, weather-protected manner and location.

Billboard, standard. An off-premises sign greater than 72 square feet in size. This type of sign is generally composed of materials (panels or modules) mounted on a building wall or freestanding structure, or painted directly on the wall or freestanding structure.

Billboard, digital. An off-premises sign greater than 72 square feet in size, utilizing digital message technology capable of changing the message or copy on the sign electronically. Digital billboards are not considered under the definitions of animated sign, changing message centers, electrical signs, illuminated signs, or flashing signs.

Brewpub. An eating and drinking establishment having a small brewery on the premises which produces beer, ale, or other malt beverage, or wine, and where the majority of the beer/wine produced is consumed on the premises. This classification allows a brewpub to sell beer/wine at retail and/or act as wholesaler for beer of its own production for off-site consumption, with appropriate state licenses.

Building. Any structure having a roof supported by columns or walls for the housing, shelter, or enclosure of persons, animals, or chattels; when separated by dividing walls without openings, each portion of such building so separated shall be deemed a separate building. For the purpose of this section, the term "building" shall not include "vehicle" as hereinafter defined.

Building, face or wall. All window and wall area of a building in one plane or elevation.

Building footprint. The outline of the total area that is surrounded by the exterior walls of a building or portion of a building, exclusive of courtyards. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof, excluding any roof overhangs.

Building, height of. In all districts except those containing a View-Sensitive Overlay District, per Section 13.06.555, building height shall be measured consistent with the applicable Building Code, Height of Building. For buildings located within a View-Sensitive Overlay District, the method provided below shall be used:

1. The height limit shall be the vertical distance between existing grade and a plane essentially parallel to the existing grade. The corners of such plane shall be located above the base points.

2. The base points shall be located at the four corners of the foundation or, if the foundation of the structure does not form a rectangle, at the four corners of the smallest rectangle which surrounds the foundation.

3. The base points shall be located on existing grade, unless determined otherwise by the Director in accordance with the provisions of Section 13.06.645.B.3.a.

4. Additional height at the rate of one foot for each 6 percent of the slope shall be allowed. This additional height shall not be allowed on the uphill portion of the structure. For the purpose of this provision, the slope shall be the difference between the elevation of the highest base point and the elevation of the lowest base point divided by the distance between those two base points.

5. No portion of a structure, including the highest gable, unless specifically excepted, shall extend above the height limit; provided, however, that a legal structure that existed before June 18, 1989, that was destroyed by fire, natural disaster, explosion, or other calamity or act of God or the public enemy may be rebuilt to its previous height within the building's prior actual dimensions, including, but not limited to, height, roof pitch, depth, and width. Such a structure cannot be enlarged, expanded, or otherwise increased in size without the enlargement or expansion meeting the zoning regulations in effect at the time of the expansion.

The height of a stepped or terraced building is the maximum height of any segment of the building.

Building materials and services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes indoor lumber sales with limited outdoor storage, tool and equipment sales or rental establishments, and building contractors' yards, but excludes lumber yards, establishments devoted exclusively to retail sales of paint and hardware, and activities classified under vehicle rental and sales.

Building orientation. The location or position of a building on a site, particularly the relationship of the principal entry to the adjacent street. A building oriented to the street has an entry facing the street.

Building, temporary. A building without a permanent foundation or footing and without permanent utilities which is removed when the designated time period, activity, or use for which the temporary building was erected, has ceased.

Dwelling, single-family detached. A building designed for or used as the residence of one family that is not attached to any other dwelling unit, except for an accessory dwelling unit as allowed.

Dwelling, three-family. A building designed for or used as the residence of three families living independently of each other.

Dwelling, townhouse. A building on its own separate parcel of land containing one single-family dwelling unit that occupies space from the foundation to the roof and is attached to one or more other townhouse dwelling units by at least one common wall.

Dwelling, two-family. A building designed for or used as the residence of two families living independently of each other.

Dwelling unit. Two or more rooms and kitchen designed for or used as the living quarters of one family.

13.06.700.E

Eating and drinking. Establishments in which food and/or beverages are prepared and sold at retail for immediate consumption. Eating and drinking establishments include restaurants and drinking establishments as defined below:

1. "Drinking establishment" means an establishment other than a restaurant, licensed to sell alcoholic beverages for consumption on premises; that limits patronage to adults of legal age for the consumption of alcohol; and in which limited food service may be accessory to the service of alcoholic beverages. Drinking establishments may include but are not limited to taverns, saloons, bars, pubs, or cocktail lounges associated with restaurants. This use does not include brewpubs, catering services, or industrial-scale food production facilities.

2. "Restaurant" means a use in which food and/or beverage preparation and service is provided for individual consumption either on- or off-premises, and in which any service of alcoholic beverages is accessory to the service of food. This classification includes, but is not limited to, cafés, eateries, bistros, diners, restaurants, sandwich shops, and coffee shops.

Eave. That part of a roof which projects over the side wall.

Electric vehicle charging stations. A public or private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle.

1. "Accessible electric vehicle charging station" means an electric vehicle charging station where the battery charging station equipment is located within accessible reach of an access aisle for a designated accessible parking space (minimum 44-inch width) and the electric vehicle.

2. "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

3. "Charging level" means the standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged. Levels 1, 2, and 3 are defined by the speed of charging and typically have the following specifications:

a. Level 1 – slow charging. Typically 15- or 20-amp breaker on a 120-volt alternating current.

b. Level 2 – medium charging. Typically 40-amp to 100-amp breaker on 208- or 240-volt alternating current.

c. Level 3 - fast or rapid charging [station]. Typically 60-amp or higher dedicated breaker on a 480-volt or higher three-phase circuit with special grounding equipment.

4. "Electric vehicle" means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; (2) a plug-in hybrid electric vehicle; (3) a neighborhood electric vehicle; (4) a medium-speed electric vehicle, (5) electric scooters and motorcycles.

5. "Electric vehicle infrastructure (EVI)" means the site design must provide electrical, associated ventilation, accessible parking, and wiring connection to transformer to support the additional potential future electric vehicle charging stations pursuant to National Electrical Code (2008) Article 625.

6. "Electric vehicle parking space" means any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.

7. "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels and that meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

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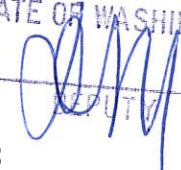
SHAWN C. McROBERTS and SARAH J.
McALISTER, husband and wife;
FRIENDS OF THE HISTORIC
WEYERHAEUSER MANSION, a
Washington non-profit corporation,

Petitioners/, Appellants

v.

NORTHWEST BAPTIST SEMINARY
d/b/a CORBAN UNIVERSITY, a
Washington nonprofit corporation, and
BLUE RIBBON COOKING, LLC, a
Washington limited liability company,

Respondents


STATE OF WASHINGTON
BY 

Case No. 49049-8

Under penalty of perjury under the laws of the State of Washington, it is hereby certified that the undersigned on this date delivered personally to the persons named below at the addresses listed below a copy of the Brief of Appellant with Appendix.

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DATED this 20th day of October, 2016, at Puyallup, Washington.


Stephen A. Burnham, WSBA #13270